

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY

3
4 IN RE: VALSARTAN PRODUCTS
5 LIABILITY LITIGATION

CIVIL ACTION NUMBER:

19-md-02875-RBK-JS

6 STATUS CONFERENCE VIA
7 REMOTE ZOOM VIDEOCONFERENCE

8 Mitchell H. Cohen Building & U.S. Courthouse
9 4th & Cooper Streets
Camden, New Jersey 08101
March 10, 2021
Commencing at 4:00 p.m.

10 B E F O R E:

SPECIAL MASTER THE HONORABLE THOMAS
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11 **ALSO PRESENT:**

12 Loretta Smith, Esquire
13 Judicial Law Clerk to The Honorable Robert B. Kugler
14
15 Larry MacStravic, Courtroom Deputy
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1 (PROCEEDINGS held via remote Zoom videoconference
2 before Special Master The Honorable Thomas I. Vanaskie at 4:00
3 p.m.)

4 JUDGE VANASKIE: So I've indicated in replies to email
5 exchange between Mr. Slater, Mr. Goldberg and myself that we'll
6 take up the issues that Mr. Slater wanted to address, and I'm
7 looking at the email now, Mr. Slater, you're going to address
8 the ZHP state secrets issue, the alleged deficiencies in the
9 Hetero discovery, and any other ZHP or Hetero privilege or
10 confidentiality issues that might come up.

11 So why don't we get right to those issues, as I said,
12 so you can return to your deposition.

13 MR. SLATER: Thank you.

14 JUDGE VANASKIE: So I guess the first issue is the ZHP
15 state secrets issue.

16 MR. SLATER: Correct. Thank you, Your Honor.

17 I think that our brief hopefully laid this out. Our
18 bottom-line position is a series of about 91 documents, it's 91
19 documents, were withheld. We do not believe that that log
20 establishes the basis to withhold those documents from us. We
21 feel that the information is scant and that even based on the
22 descriptions that are there, which are not very helpful, even
23 with what's there, we gave some examples of things like
24 valsartan quality problems being discussed apparently with the
25 regulatory agency in China. So on its face, because of the way

1 that the log is set up, it doesn't meet its burden. There's no
2 explanation of exactly which law provisions are asserted,
3 there's no analysis, there's no description of the subject
4 matter of any detail or any analysis.

5 So our first request would be to just strike -- strike
6 the log and have all the documents produced, but our fallback
7 position is that the log would have to be fixed very quickly.
8 I've laid out in a letter or we've laid out in a letter for
9 Your Honor what we think needs to be done if they're going to
10 be given yet another chance to fix this log.

11 And we've also laid out an issue which I don't know
12 that has to be decided today but we wanted Your Honor to be
13 aware that there was core discovery orders way back when in
14 this case that required regulatory communications to be
15 produced, and it appears from this log that there were some
16 that were not produced nor was a protective order sought at
17 that time, which is concerning to us. And if we get those
18 documents, we'll, obviously, be able to look and see, you know,
19 how much -- how squarely they fit within that order, but we're
20 very concerned. And Your Honor has the law. Even if some of
21 these documents could be arguably within some of these laws,
22 and they cited seven to eight general sections of laws so I
23 don't see how that can be a competent argument, but even so,
24 Your Honor would have the right to order production anyway.

25 So we can go either way but we wanted to put this

1 before Your Honor because, obviously, time is of the essence to
2 us and we didn't feel like it was something we should wait on
3 or take time with.

4 JUDGE VANASKIE: All right. Who will be addressing
5 this issue on behalf of ZHP?

6 MS. PRISELAC: Your Honor, this is Jessica Priselac
7 for the ZHP defendants. Good afternoon.

8 JUDGE VANASKIE: Good afternoon.

9 MS. PRISELAC: So, Your Honor, you know, to start
10 with, from a legal perspective, in their letter, the plaintiffs
11 have cited no rule, no precedent or court order that would
12 entitle them to have this log stricken and the documents
13 produced. From a factual perspective, the fact that ZHP was
14 required by Chinese law to withhold some documents on the basis
15 of state secrecy laws of China is not a surprise to the
16 plaintiffs. This issue was brought to the attention of the
17 plaintiffs and the Court in 2019.

18 I would direct Your Honor to ECF 2290 from 2019 in
19 which the defendants laid out this issue and also to the
20 transcript of Judge Schneider's proceeding from December 18th,
21 2019. And that's important because to the extent the
22 plaintiffs are now claiming that ZHP should have moved for a
23 protective order or that it has somehow violated the Macro
24 Discovery Order, the December conference I just referenced is
25 directly -- directly contradicts that argument because during

1 that conference, what Judge Schneider said is that he
2 understood this to be an issue and that the way he wanted the
3 parties to handle it was by ZHP providing something akin to a
4 privilege log; and after that -- after ZHP provided that log,
5 the plaintiffs could review it and the plaintiffs could
6 challenge entries to that log once that process was completed.
7 And that's exactly what the parties have been doing up until
8 last week.

9 Now, turning to the log itself, the plaintiffs, in
10 their letter, complained -- have complained about purported
11 deficiencies in the log, and I'd be happy to address those if
12 Your Honor had any questions. The logs are attached as Exhibit
13 H and I to the plaintiffs' letter and they're quite detailed,
14 in our opinion; but, you know, more to the point is that during
15 our first meet and confer on this issue, which was on Friday,
16 essentially, what the plaintiffs told us is that they have
17 enough information to make a determination, in their opinion,
18 that these documents were all, in their words, relevant and,
19 therefore, they did not care what Chinese law applied or what
20 the log said; they believe that the Chinese -- that these
21 documents, under U.S. law, should be produced because they're
22 relevant.

23 Now, to that end, we don't think getting into an
24 argument about whether the log is or isn't sufficient is worth
25 pursuing at this point if the -- if the plaintiffs' position

1 essentially is, and it also, you know, goes through their
2 papers, is that they just don't believe that this Court should
3 uphold Chinese secrecy laws. And so if that's the issue, and
4 that's what we gather from the meet and confer on Friday, then
5 our position is that the plaintiffs should be required to
6 engage in the meet-and-confer process regarding their
7 *Aerospatiale* factors, which is the Supreme Court case that we
8 cited in our letter, and that goes through the different
9 factors that the parties must consult about and the Court must,
10 obviously, weigh in on to determine whether a blocking statute
11 should be upheld by a U.S. court.

12 So, in that vein, we don't believe the meet-and-confer
13 process is over, Your Honor, because during the call on Friday,
14 the plaintiffs weren't even prepared to discuss those points.

15 And just finally, Your Honor, I just briefly want to
16 point out that we're talking about 91 documents here. That's
17 less than one-tenth of one percent of the documents at issue in
18 this case; but on the flip side, my client faces extreme civil
19 and criminal penalties if they produce these documents, which
20 is why it's really important to -- if we were going to take
21 this issue any further in front of the Court, we would request
22 full briefing because it is a really nuanced issue of comity in
23 international law that can't be addressed in a letter brief at
24 this point.

25 Thank you, Your Honor.

1 JUDGE VANASKIE: Mr. Slater?

2 MR. SLATER: Sure. Thank you, Your Honor.

3 I'm trying to find a good analogy for what the
4 response is here, and I think it's sort of endemic to what's
5 been happening in the litigation, I think it's going to be
6 thematic of a lot of the issues you're going to hear today,
7 which is, I'm going to make up a term, I'm not the funniest guy
8 but it's like death by a thousand meet and confers. You know,
9 the defense in this litigation is grinding us to a halt if they
10 could. They want to meet and confer on this topic for weeks or
11 months. We don't have time. And, you know, it's pretty clear
12 from our letter that we were prepared for the meet and confer.
13 We went in there with five people, we raised every substantive
14 comment we could. We didn't say that it's adequate law. What
15 we said is we need to do everything we can to push forward
16 right now. So, you know, either the logs should be stricken or
17 they should, you know, have to fix it in the next couple days
18 and we should be able to get these issues before Your Honor.

19 Also --

20 JUDGE VANASKIE: Sorry about that.

21 MR. SLATER: That's okay. I'm glad it was you, not
22 me.

23 You know, and one of the things that's getting lost
24 here is, A, they said that they have lawyers approaching the
25 Chinese government. We have no report on that. That should

1 have been produced by now. They told us on Friday. They --
2 I'm sorry, I'm distracted. Someone walked in here.

3 They have lawyers in China apparently approaching the
4 government. They told us that Friday. They haven't documented
5 that or shown us what they've said to the government. They --
6 they admitted that some of the documents on their face appeared
7 not to fall within the law, and yet they haven't designated
8 them.

9 So, you know, I think that the unfortunate reality of
10 this litigation at this point is, we, as the plaintiffs, and
11 this is an example, we have to come to Your Honor, we're going
12 to have to keep plowing ahead, putting the plow in the dirt and
13 pushing because if we go the way that they want to on this
14 issue, it'll go on for two months and then the depositions will
15 be over and then it'll be over and we, obviously, don't have
16 the time for that.

17 JUDGE VANASKIE: All right. Any response, Ms.
18 Priselac?

19 MS. PRISELAC: Your Honor, whether or not my clients
20 have approached the Chinese government to get permission to
21 produce these documents is really outside of the scope of
22 anything we have a duty to report to Mr. Slater or to his
23 clients and it's really not part of the analysis. The reality
24 is my client has undertaken that effort because they have zero
25 interest in withholding these documents and they have no

1 control over this. This is in control of the Chinese
2 government.

3 Secondly, we did not agree that anything on that log
4 should be produced. We said we would look into questions that
5 the plaintiffs had during that meet and confer. And, Your
6 Honor, to be frank, the plaintiffs were not prepared to discuss
7 any of these issues on Friday. And part of our problem on
8 Friday is that they weren't prepared, including Mr. Slater
9 telling me he didn't even have a copy of the log to discuss in
10 front of him.

11 So we would respectfully request that they be directed
12 to meet and confer substantively with us on these issues.

13 JUDGE VANASKIE: I'm very concerned about the time it
14 takes to get these issues resolved and I'm concerned about the
15 delay that attends the meet and confer. You had a meet and
16 confer on the issue and now you're suggesting it wasn't
17 adequate and have another meet and confer.

18 Also, I do want to say, you gave me a lot to chew on
19 for this conference with very little time.

20 What I'd like to suggest is that I hear argument on
21 this issue next Monday or Tuesday, that's the 15th or 16th of
22 March. That's not a lengthy delay. Perhaps you could meet and
23 confer in the interim. But I want to decide it and I want to
24 resolve it quickly.

25 MS. PRISELAC: Your Honor --

1 JUDGE VANASKIE: I don't feel equipped to decide it
2 today.

3 Go ahead, Ms. Priselac.

4 MS. PRISELAC: I'm sorry. Your Honor, you know,
5 having, you know, reviewed a substantial amount of the case law
6 on this issue, typically what happens in these cases is that
7 both sides present declarations on the applicability of Chinese
8 law to the documents at issue.

9 I think the first issue I have is that I don't know
10 exactly what Mr. Slater is saying on this log doesn't meet the
11 *Aerospatiale* factors. I tried to have that conversation on
12 Friday; he refused to have it.

13 The second is in order for the Chinese law firm that
14 does make these determinations to present Your Honor with a
15 declaration, a sworn declaration, on these subjects, is going
16 to take time given the time difference, the fact that, you
17 know, they're in another country, and we're going to have to
18 have a more specific set of entries that Mr. Slater is
19 challenging in order for them to write that declaration.

20 The issue is that I -- for example, I can't look at
21 these documents even, which is why these declarations have to
22 come from the Chinese law firm.

23 So, to that end, we would need at least two weeks to
24 get that briefing together.

25 MR. SLATER: We obviously object, Your Honor. We're

1 fully in line with Your Honor's plan to take argument on this
2 early next week.

3 JUDGE VANASKIE: Yes, my view of this is that it's the
4 logs that are at issue here, and it's a question of the
5 adequacy of the logs; and if the logs are not adequate, then
6 documents should be produced or the logs supplemented, but I
7 want it get to this quickly. I don't want to wait two weeks
8 and then have, well, let us supplement our log.

9 MS. PRISELAC: Well, Your Honor, I'm not -- I'm not
10 proposing that. My proposal is that -- my -- I think there are
11 two different issues here. Right? The sufficiency of the log,
12 which Mr. Slater is claiming is insufficient on the one hand
13 but claiming it's plenty sufficient on the other hand to say
14 that these documents are produced. I don't think really the
15 log is the issue. I think the *Aerospatiale* briefing is the
16 issue. And so my point was that, you know, there's no
17 precedence, you know, that these types of documents should be
18 produced because of an insufficiency of the log.

19 The case law is clear that any Court deciding these
20 factors has to go through a complete *Aerospatiale* analysis. So
21 that's different than a privilege log analysis or that type of
22 legal analysis.

23 JUDGE VANASKIE: Anything else, Mr. Slater?

24 MR. SLATER: No, Your Honor.

25 JUDGE VANASKIE: No. I'm going to hold argument on

1 this. We'll schedule a time for next Tuesday and I will be
2 focusing on the log and the arguments that have been presented.
3 If, Ms. Priselac, you'd like to file a reply on the matters
4 that were briefed by Mr. Slater, you can do so by Monday. But
5 this needs to move forward and I am concerned about delay. And
6 so we'll hear the argument, we'll make a decision based upon
7 the logs. If there is something else or if we -- if it turns
8 out that we cannot make a decision, well, then we'll just have
9 to wait the declaration, but I'm going to decide right now
10 whether the logs were adequate to invoke the privilege, the
11 state secret privilege. At least that's what my focus seems to
12 be right now.

13 All right. What's the next issue you were going to
14 take up, Mr. Slater?

15 MR. SLATER: Thank you, Your Honor. I feel very
16 special today. Thank you.

17 The Hetero issues, and -- and I'll say this: We've
18 laid out where we are and we've given Your Honor our most
19 recent letter that we wrote to Hetero's counsel. They've asked
20 to talk to us again. We've expressed that we're very
21 concerned, we've expressed our skepticism. I'm supposed to
22 depose a witness, I believe it's either Monday and Tuesday or
23 Tuesday and Wednesday next week who's a cGMP witness on issues
24 where we definitely do not have all of the quality manuals and
25 SOPs. We don't want to move the deposition. We're looking to

1 get these depositions done.

2 Counsel reached out and said he wants to talk.

3 What I would ask at this point is this: That we try
4 to exhaust whatever efforts we can exhaust with Hetero by the
5 end of this week or early next week; and then I think that at
6 that point we're going to have to come to the Court for some
7 definitive relief. It may be by the end of the week. I think
8 our next meet and confer is going to really be where the rubber
9 hits the road. I think we're out of options because, again, I
10 know Your Honor wants us to push forward and we want to meet
11 that. We want to get it done. So I don't see any alternative
12 on our end.

13 JUDGE VANASKIE: You know, I read the submission by
14 Hetero and I read your submission on this issue and it was like
15 ships passing in the night. One side's saying, you know, we're
16 going to work it all out and the other side's saying we need a
17 resolution now.

18 Who's speaking on behalf of Hetero?

19 MR. SHAH: Good afternoon, Your Honor. This is Nakul
20 Shah on behalf of Hetero.

21 JUDGE VANASKIE: Good afternoon, Nakul.

22 MR. SHAH: Your Honor, since our last conference on
23 February 24th, Hetero's made significant progress in addressing
24 the issues that plaintiffs have raised. Since that time we've
25 made document productions, we've specifically addressed issues

1 raised by the plaintiffs and we've made an effort to prioritize
2 the issues that were relevant to the upcoming depositions.

3 We simply ask that Your Honor afford us the
4 opportunity to continue to meet and confer with the plaintiffs
5 as well as continue to make subsequent document productions.
6 In fact, this morning we contacted plaintiffs' counsel as well
7 with an additional production on an additional issue.

8 We believe that we are ticking off the issues that
9 plaintiffs have raised and we're optimistic that we will be
10 able to resolve all of the issues that plaintiffs have raised
11 and we believe we've been cooperating with plaintiffs as well.

12 We don't think it's necessary for judicial
13 intervention at this time, in light of the fact that we've been
14 continuing to cooperate with plaintiffs, and we do anticipate
15 remedying all of the issues that plaintiffs raised.

16 JUDGE VANASKIE: All right. Thank you, Mr. Shah.

17 Would it be possible to get a status report by next
18 Tuesday in terms of where things stand with respect to your
19 continuing efforts to reach a resolution on these issues.

20 MR. SHAH: Yes, Your Honor.

21 MR. SLATER: Absolutely.

22 JUDGE VANASKIE: So that's what we'll ask for, a
23 status report by next Tuesday to determine the resolution of --
24 to determine where these issues stand. And I'm trying to make
25 a note here to make sure I get an order out on that.

1 MR. ABRAHAM: We appreciate that. You'll just have to
2 let us know what your thinking is for the depositions next
3 week.

4 MR. SLATER: I think we need to talk to you all. And
5 it may not be -- I mean, I'm in a deposition today and
6 tomorrow. So there's plenty of people who are working on this
7 project with us so I know we can talk late tomorrow if we need
8 to.

9 MR. ABRAHAM: Okay. I mean, I spoke to Layne about
10 8:30 last night, so she certainly knows where to reach me, but
11 we're around.

12 JUDGE VANASKIE: All right. And that's Mr. Abraham
13 who was talking?

14 MR. ABRAHAM: Yes, this is Eric Abraham.

15 JUDGE VANASKIE: All right. Thank you.

16 MR. ABRAHAM: Thank you very much, Judge.

17 JUDGE VANASKIE: Thank you. All right.

18 Mr. Slater, next issue.

19 MR. SLATER: I think that's all I had. I had just put
20 in a cautionary tail about any privilege or confidentiality
21 issues with ZHP and Hetero but I don't think any are on the --
22 are on the agenda.

23 So as long as there's nothing else to be raised, I can
24 go back to the deposition, with your permission.

25 MS. BONNER: Your Honor, respectfully, my name is

1 Kelly Bonner. I'm appearing on behalf of -- hello?

2 JUDGE VANASKIE: Hello?

3 MS. BONNER: Yes, Your Honor, can you hear me? This
4 is Kelly Bonner on behalf of the ZHP parties. Hello? Your
5 Honor?

6 MR. SLATER: I think the Judge may be having an issue
7 with the Internet, possibly connection. It looks like he
8 clicked off and will probably sign back in.

9 Was I lost on this for a while or was I coming
10 through? Because everything froze for a second. Everybody was
11 frozen.

12 MS. WHITELEY: No. Adam, we can hear you and Kelly
13 just fine.

14 MR. SLATER: Okay. Hi, Conlee.

15 MS. WHITELEY: Hi Adam. Hi Kelly.

16 MS. BONNER: Hello.

17 MS. SMITH: Perhaps while we are waiting for Judge
18 Vanaskie to rejoin us, I just want to let the parties know the
19 last opinion for the motions to dismiss is in Judge Kugler's
20 hands, so I'm expecting it to be issued some time this week.

21 MR. SLATER: Thank you. You're off the hook.

22 MS. SMITH: Thank you.

23 JUDGE VANASKIE: All right. Can you hear me?

24 MS. BONNER: Yes, Your Honor, I can hear you.

25 JUDGE VANASKIE: And it dropped on my end.

1 Apparently, I had the problem.

2 So, Mr. Slater, you were about to conclude?

3 MR. SLATER: I thought I was.

4 JUDGE VANASKIE: Okay.

5 MR. SLATER: All I had said was, unless there's a
6 Hetero or a ZHP issue that's outstanding, but I don't think
7 there are any. So if that's true, I can, with your permission,
8 I can go back to the deposition.

9 JUDGE VANASKIE: Yes. I apologize to the group. As I
10 said, the call dropped on my end.

11 Ms. Bonner, did you want to say anything?

12 MS. BONNER: Yes, Your Honor. Just speaking on behalf
13 of the ZHP parties with respect to confidentiality issues,
14 because they were put on the agenda for today, we would just
15 like to make very clear that the ZHP parties respectfully
16 request that these issues be deferred and that any deadlines
17 for motions to seal be held in abeyance until such time as the
18 Court issues its decision on the outstanding motion to seal,
19 which was fully briefed on Monday.

20 JUDGE VANASKIE: And as I understand it as well, Ms.
21 Bonner, I'm glad you raised the question, the documents in
22 question could be used at depositions, if necessary; it's just
23 that they're to be treated as confidential. All right.

24 MS. BONNER: That is correct, Your Honor.

25 JUDGE VANASKIE: So, Mr. Slater, I think we can

1 proceed and then get a ruling from me on the motion to seal.

2 MR. SLATER: Thank you so much.

3 JUDGE VANASKIE: All right. Thank you.

4 MS. BONNER: Thank you, Your Honor.

5 JUDGE VANASKIE: Thanks.

6 MR. SLATER: Thank you. Have a very nice day. Good
7 luck, everyone.

8 (Mr. Slater leaves the videoconference.)

9 JUDGE VANASKIE: All right. So we'll go back to the
10 agenda letter that I received from Mr. Slater. I will go in
11 the order that he has established.

12 The first issue that he raised has to deal with
13 bellwether plaintiffs' discovery or discovery from bellwether
14 plaintiffs, and it seemed to me that this issue has been
15 resolved with the defendants being able to serve discovery
16 requests on an individualized basis as necessary.

17 Who will be addressing this issue for the defense
18 team?

19 MS. LOGAS: Good afternoon, Your Honor. Alexander
20 Bach Logas, counsel for Teva. Yes, Your Honor apprehended it
21 correctly.

22 THE COURT REPORTER: I'm sorry. Excuse me. You're
23 going to have to start again. I lost you. If you would,
24 please. Thank you.

25 MS. LOGAS: Sure, yes. Absolutely.

1 Your Honor apprehended the issue correctly. We were
2 able to resolve this issue. Yesterday we met and conferred on
3 the proposed discovery requests and we agreed to withdraw those
4 requests and will instead serve case-specific discovery
5 requests in the cases as needed.

6 So in light of that, I believe the parties are in
7 agreement that there's no dispute for the Court to consider
8 today on this issue.

9 JUDGE VANASKIE: Great. Good. Thank you.

10 MS. LOGAS: You're welcome.

11 JUDGE VANASKIE: We're getting some feedback and it
12 might be coming from 1813***218, I'm not sure who that is, it's
13 on the phone. If you could mute your phone, that might be
14 helpful.

15 All right. The next issue I have is the dismissal
16 order for the peripheral defendants. And I take it that's just
17 a matter of us getting Judge Kugler to sign the order?

18 Who wants to address that on behalf of plaintiffs?
19 Anybody?

20 In the absence of Mr. Slater, we don't have a
21 spokesperson for the plaintiffs.

22 How about on the defence side?

23 Wait a minute. Mr. Honik, you're on.

24 MR. HONIK: Your Honor, I'm looking through the
25 letter, and I apologize that no one's been assigned to it.

1 With your indulgence, maybe we could just put it on the back
2 burner and we can circle back at the end. I do believe it's
3 just a housekeeping matter.

4 JUDGE VANASKIE: Yes, I think it is. The only thing
5 that was in the letter was the proposed order was submitted to
6 the Court.

7 MR. HONIK: I think it is just housekeeping and your
8 statement that it just requires Judge Kugler's attention and
9 signature is correct.

10 JUDGE VANASKIE: Okay. Very well. Thank you.

11 MS. WHITELEY: Your Honor?

12 JUDGE VANASKIE: Yes.

13 MS. WHITELEY: That's correct.

14 JUDGE VANASKIE: Ms. Whiteley.

15 MS. WHITELEY: On behalf of the plaintiff, that's
16 correct. We confirmed this before the call. I couldn't get
17 off mute quickly enough. And we were just giving you a status
18 update on that.

19 JUDGE VANASKIE: All right. Very well. Thanks.

20 The next issue on the agenda is the update of service
21 of losartan and irbesartan master complaints. And this should
22 be a matter that's almost resolved, I take it? Is it correct
23 that the only existing defendant existing on the Valsartan
24 matter that's declining to accept service except through the
25 Hague Convention process is Teva?

1 MR. HARKINS: Your Honor, good afternoon. This is
2 Steven Harkins with Greenberg, Traurig on behalf of the Teva
3 defendants and the joint defense group. I believe that is
4 correct. The only entity previously served in Valsartan that
5 is declining to accept service is Teva Pharmaceutical
6 Industries Limited.

7 JUDGE VANASKIE: Okay. Any prospect of them changing
8 their mind?

9 MR. HARKINS: Your Honor, I don't believe so at this
10 time. We are familiar with the Court's prior order that
11 addressed a similar issue; and, of course, if an order is
12 entered asking Teva to waive service or to accept service by
13 some other means, we'll certainly comply. We do believe that
14 there is a slightly different issue with the notice of claims
15 related to a different type of drug as opposed to different
16 claims all related to the same valsartan drug, which was
17 addressed previously. I don't believe that Teva's position is
18 going to change but certainly we'll see and can be prepared to
19 address this with the Court if they believe any further
20 argument's required.

21 JUDGE VANASKIE: All right. Thank you, Mr. Harkins.
22 Who will address this issue on behalf of the
23 plaintiffs? Do we have a spokesperson? Can I impose on you,
24 Mr. Honik or Mr. Stanoch?

25 MR. STANOCH: Yes, Your Honor, hi. This is David

1 Stanoch for the plaintiff. I'll take the baton for this. I
2 believe Ms. Goldenberg is on a plane and she obviously did not
3 land in time.

4 Your Honor, Teva Industries, the one that Mr. Harkins
5 referred to, is already in the case for the Valsartan matter.
6 Judge Kugler had entered an order earlier that a defendant in
7 the case in this MDL for one purpose is in it for all purposes.
8 We simply could have amended the operative Valsartan complaints
9 to add the losartan and irbesartan allegations, which Judge
10 Kugler told us to break out into separate complaints for
11 everyone's convenience, so we don't believe we should be
12 penalized for making it convenient for all of the lawyers and
13 the Court and now have to wait six months to serve a defendant
14 who's already here through the Hague in Israel when they're
15 participating in discovery, we have their documents, we're
16 deposing their people, we're deposing their Israeli people in a
17 couple weeks. So we don't think this sort of delay is
18 consistent with Judge Kugler's prior treatment of these issues
19 in this case and that Teva should be directed to accept service
20 or waive service through the Hague in this instance.

21 JUDGE VANASKIE: All right. Anything else on this
22 issue?

23 MR. HARKINS: Your Honor, on behalf of Teva, the only
24 thing I would note, as was previously understood when we were
25 waiting for the ruling on this initial issue with respect to

1 service of multiple Valsartan complaints, Teva's continuing to
2 comply with its discovery requirements. We have not objected
3 to the production of documents on the basis that Teva Limited
4 was not served. And I certainly anticipate that if service of
5 a losartan complaint was again required, we would similarly
6 continue to participate in discovery and all that that entails
7 while that process was playing out.

8 JUDGE VANASKIE: Mr. Stanoch, can you submit to me a
9 proposed order that would require Teva to accept service of
10 these? I'm not sure I've got the authority to do that but I'd
11 go ahead and exercise it if I do.

12 MR. STANOCH: Yes, Your Honor, we'll do that.

13 JUDGE VANASKIE: All right. Thank you.

14 I think we're now up to the Aurobindo issues.

15 MR. HONIK: Your Honor, Ruben Honik, good afternoon,
16 once again.

17 As Mr. Stanoch noted, Ms. Goldenberg is just -- I
18 think she's just connecting. Perhaps we can -- what I was
19 going to propose is that we go on to whatever the next
20 defendant-specific discovery issue. For example, I'm covering
21 Mylan. I'm happy to do that for Your Honor while Ms.
22 Goldenberg gets on. She's been very close to the Aurobindo
23 negotiations, there are a lot of granular issues and she asked
24 to be heard toward the end of today's conference and perhaps we
25 can move on to the other defendant discovery updates.

1 JUDGE VANASKIE: That's a good suggestion. There's
2 quite a lot on Aurobindo to discuss.

3 MR. HONIK: Yes.

4 JUDGE VANASKIE: So let's move to the Mylan discovery
5 issues.

6 MR. HONIK: Yes, Your Honor. And I can be heard on
7 that, with your permission.

8 JUDGE VANASKIE: Yes, please.

9 MR. HONIK: There are two issues, Judge. One is
10 arguably unripe according to Mylan. I will nonetheless address
11 it with Your Honor because we believe it is ripe.

12 Before we get to the second of the two issues, the
13 first one is clearly ripe.

14 And let me begin by saying that we started Tuesday of
15 this week the deposition, a three-day deposition, of a 30(b)(6)
16 representative from Mylan corporate who's in charge of quality
17 assurance globally that is going to continue for three days.
18 We've completed one; we've got two more days to go. At about
19 1:16 in the morning Saturday we received what can only be
20 described as a document dump of 35,000 documents. And
21 astonishing as that may be on its face, what's even more
22 astonishing is that 20,000 of those identified documents have
23 been withheld on the basis that they're not responsive. And if
24 this were the first time that such a thing happened, we would
25 be running around trying to figure it out; but it didn't take

1 us long to figure out what's happened here because it's
2 unfortunately, happened multiple times before.

3 And let me say parenthetically that, and I know Mr.
4 Trischler is on the line, we've worked rather cooperatively to
5 iron out a lot of problems and so I don't mean in any way to
6 suggest that they haven't responded in good faith. But what we
7 have here is a situation, as our letter to the Court points
8 out, that in reviewing more than 4,000 of those documents in
9 very short order, we noticed that they undoubtedly had to be
10 relevant and responsive to this litigation. And we say that
11 because the references on there are to words and phrases that
12 go directly to this case.

13 By way of a tiny bit of background, the reason Mylan
14 is in this case, the root cause analysis about which there's no
15 dispute that placed NDEA and NDMA in their product that was
16 sold in the United States really resulted from a problem with
17 recovered solvent. Part of the chemical process in making the
18 API involves the use of a solvent and in the case of Mylan and
19 others in this case, but Mylan in particular, they didn't use
20 fresh solvent on every occasion; in fact, they've always used
21 recovered or recycled solvent. And they had an outside vendor
22 who did that for them by the name of Lantech and there was a
23 second named Vega. And I'm only giving the Court this
24 background because as we went through the withheld documents,
25 at least more than 4,000 of them, they all referred to this

1 outside vendor, they referred to valsartan and they referred to
2 a great number of words and phrases that admittedly concern all
3 the issues here.

4 So we bring this matter up to the Court because the
5 30(b)(6) deponent that's under oath now and has two more days
6 to present testimony represents more than 50 percent of the
7 30(b)(6) topics that we're covering. So I dare say we need to
8 have some resolution about whether those 20,000 withheld
9 documents which we think almost certainly are relevant and
10 should be produced should be ordered to be produced
11 immediately.

12 JUDGE VANASKIE: All right. Is it Mr. Trischler?

13 MR. TRISCHLER: Yes, it's Clem Trischler, Your Honor,
14 representing the Mylan defendants. Good afternoon.

15 JUDGE VANASKIE: Good afternoon.

16 MR. TRISCHLER: There are several issues that, you
17 know, that I think need to be brought to the Court's attention.

18 First, I would take issue with Mr. Honik's
19 characterization of the production last week as a document
20 dump. This is ancient history but I guess it's important since
21 the plaintiff has brought it up.

22 Judge Schneider issued an order in November of last
23 year suspending the obligation of Mylan to complete its
24 production of custodial files until the parties worked out
25 issues regarding Mylan's right to use TAR in order to cut off

1 custodial review. We resolved those issues through numerous
2 and lengthy meet-and-confer processes in November, December,
3 January, and I sent correspondence to the plaintiffs telling
4 them that based on that, we would finish our production on
5 March 5, which is precisely what we did. And so to suggest
6 that there's some document dump on the eve of depositions is
7 just unfair and, you know, an attempt to rewrite history in a
8 way that's just not accurate.

9 But to the point of this issue -- the other issue that
10 we have to this point that Mylan has not produced relevant
11 documents, I take issue with that because, again, what we have
12 here is a situation where the plaintiffs are looking to rewrite
13 the discovery rules and the discovery orders in this case.

14 There was an agreement in place since September of
15 last year that irrelevant and nonresponsive documents that are
16 attached to an otherwise responsive email need not be produced.
17 Part of the ESI protocol that reads, "Parties may withhold a
18 document within a responsive document family that is entirely
19 nonresponsive because it does not concern the product at issue
20 or otherwise relate to claims or defenses." And so what we're
21 dealing with here, Judge, and I know it's -- in your shoes,
22 it's hard to -- when you haven't seen any of these documents,
23 it's hard to sort through it all, but what we're really talking
24 about here is situations where there'll be a custodial email
25 that's been produced where someone might say, here are our

1 latest nitrosamine test results and so the file name in that
2 email will be labeled nitrosamine testing and the plaintiff
3 looks at that file name and says, oh my gosh, that's got to be
4 relevant. But when you look at the attachments, it might be,
5 and I'm looking at one right now, it's nitrosamine test results
6 for a product called nizatidine, it's nitrosamine test results
7 for a product called clarithromycin, it's nitrosamine test
8 results for a product called metformin, none of which are
9 relevant and all of which in the Macro Discovery rulings which
10 were made by the Court, the Court has said you don't need to
11 produce documents relating to other products. And those are
12 the documents that have been essentially withheld.

13 And so it's not surprising that when you look at these
14 file names -- because in 2019, after the recalls that came
15 about in 2018, the FDA put in place a lot of new measures.
16 They required risk assessments for nitrosamines for all
17 products. And so you'll have emails that will say, here are
18 our latest risk assessments and it might attach risk
19 assessments for seven products. One might be valsartan, the
20 other half-dozen aren't. We're not required to produce those
21 other half-dozen but because they might be labeled nitrosamine
22 risk assessments on the initial email or on the file name,
23 plaintiff thinks they're relevant.

24 We've laid eyes on these documents, we know what our
25 obligations are under the Rules of Civil Procedure, and in

1 laying eyes on these documents, we've made a determination that
2 they're not relevant or responsive to the discovery requests in
3 this case. And simply because they have a file name that's
4 curious to the plaintiff doesn't change that. It doesn't mean
5 that, you know, that the documents suddenly become relevant or
6 that we ignore the core discovery orders that were entered, the
7 Macro Discovery Orders and the ESI protocol, all of which we've
8 operated under and produced these materials.

9 And so it's certainly not a ripe issue, I think Mr.
10 Honik acknowledged that; but if they want to argue it anyway,
11 you know, that's fine. I'm all for expediency, but at some
12 point you have to -- you have to actually look at an issue and
13 consider it; and the plaintiffs, you know, look at a file name
14 and say it's relevant and somehow they're in a better position
15 to judge that than people who've actually looked at the
16 document and made the determination as to what it really is.

17 JUDGE VANASKIE: Mr. Trischler, how have the 20,000
18 documents that are nonresponsive been identified? Do you have
19 them identified by Bates number in some manner?

20 MR. TRISCHLER: I don't -- I don't know the answer to
21 that. I think Mr. Stoy from my office is on the line. He
22 would probably be able to answer that, Judge.

23 JUDGE VANASKIE: All right.

24 MR. STOY: Good afternoon, Your Honor.

25 JUDGE VANASKIE: Good afternoon.

1 MR. STOY: This is Frank Stoy.

2 The documents in question I believe were sent to us on
3 a spreadsheet by the plaintiffs and we could -- we have the
4 ability to identify them by Bates number.

5 JUDGE VANASKIE: Okay. What I was going to suggest,
6 and, Mr. Honik, I want to get your reaction to this, is that,
7 and I've done this before, that you get a statistically valid
8 sampling of the documents withheld as nonresponsive and you
9 review them, and they'd have to be selected randomly, so they
10 have to be selected randomly, rather than producing 20,000
11 documents for either you to review or me to review, it'd be
12 certainly a much smaller set, and you can review them to
13 determine, yes, they're either responsive, they're largely
14 responsive, which would call into question the designation as
15 nonresponsive, or they really are not responsive, and so you
16 can have some level of confidence that they've been
17 appropriately determined by Mylan to be nonresponsive.

18 What about that approach?

19 MR. HONIK: Your Honor, I think essentially the
20 approach is good; but I have to say that, in essence, we've
21 done that. And let me take a half-step back, if I could.

22 JUDGE VANASKIE: Okay.

23 MR. HONIK: I think Your Honor's first decision in
24 this case, major one anyway, from my memory, was moving out the
25 deposition and discovery schedule by 60 days. You'll remember

1 that.

2 JUDGE VANASKIE: Yes.

3 MR. HONIK: And you'll remember the underpinning for
4 that was, in part, an abundant fear on the part of defendants
5 that they would produce witnesses for whom inadequate document
6 production has occurred and that plaintiffs would come back and
7 want another bite at the apple.

8 So image the dilemma that we're in now. We're about
9 to take a 30(b)(6) deposition of a global quality assurance
10 person from Mylan on Tuesday, it's Saturday night and we get
11 35,000 documents sent to us, 20,000 of which are withheld.
12 This is -- this is the actual recipe for exactly the thing
13 defendants wanted to avoid.

14 So, number one, it's -- it's an oober-ripe issue to
15 determine now.

16 Now, the question you've asked is the best one, which
17 is, how practically can we roll up our sleeves and figure this
18 out? Because I'm sure the Court doesn't want to prejudice us
19 plaintiffs from reviewing documents that may be very germane to
20 depositions that are ongoing today.

21 The answer, Your Honor, is we've really done that.
22 Despite the short window of time between Saturday and today,
23 actually between then and Tuesday, we pared down the 20,000
24 documents to a little over 4,000 documents and put it on a
25 spreadsheet and sent it to Mr. Trischler's office.

1 And just to give you a flavor for what we are talking
2 about, we didn't pick fanciful things and they weren't in our
3 imagination.

4 So, for example, among the attachments they apparently
5 withheld is, for example, something called o-Xylene failures
6 and VST2 report. Now, we don't need to take random samples. I
7 think the Court should look at the 4,000 or so documents or
8 some smaller subset because we believe with all our heart that
9 these that we've picked out are directly on point to the theory
10 of this case, to what we want to examine their witnesses about,
11 and I would commend to you the list that we've prepared, the
12 Court can certainly entertain a fewer number, certainly, than
13 4,000; but we've already done the task of providing a sample, a
14 cross-sample, of documents that we believe very strongly should
15 be produced to us.

16 JUDGE VANASKIE: Do you want the full 4,200 documents
17 produced?

18 MR. HONIK: We do, Your Honor, or at the least we want
19 some explanation for why such things as, you know, o-Xylene
20 failure report, evaluation report regarding NDMA, valsartan
21 NDMA, can be withheld. It can't be the case, it seems to me,
22 that all 4 ,000 of them, although titled in this provocative
23 way, are truly unresponsive or unrelated. And we have a
24 history here. If this were the first time that this happened,
25 and the explanation was that we're jumping to a conclusion

1 about what the item is, you know, maybe Mr. Trischler would be
2 right. But the fact remains this is maybe the third or fourth
3 round where we've had to do this. We've pressed them, we've
4 had meet and confers in many instances, we've had some help
5 from Judge Schneider, and they ended up producing a great many
6 of these documents that were originally withheld; and all I'm
7 trying to do at this juncture, now that the 30(b)(6) deposition
8 horse has left the barn, is not be in the very position that
9 Mr. Trischler sought to avoid, which is our having to recall
10 one or more of their witnesses for a second bite at the apple.

11 Instead, I think the better and more practical thing
12 to do is to make an immediate evaluation. I think the
13 documents should be produced to the Court. If the Court
14 determines that they're relevant in the way we suspect they
15 are, they should be turned over to us immediately. We're
16 there.

17 JUDGE VANASKIE: Mr. Trischler, what would be involved
18 in producing the 4,199 documents?

19 MR. TRISCHLER: In terms -- mechanically, in terms of
20 how --

21 JUDGE VANASKIE: Mechanically, just logistically, yes.
22 I mean, you say they're nonresponsive. So if they're
23 nonresponsive, what's the burden to you to produce them?
24 That's what I'm -- you know, is there any prejudice beyond the
25 expense of producing, electronically, I suppose, 4,200

1 documents?

2 MR. TRISCHLER: Simply the -- I don't think we're
3 objecting on burdensome. We're objecting on, you know, Rule
4 26, Your Honor, that it's simply not relevant or responsive.
5 Why doesn't a defendant open the vaults to the corporation
6 because a plaintiff filed a lawsuit? I mean, if the documents
7 aren't relevant or responsive, there's no obligation to produce
8 them. And so now we've come to an argument that, well, we
9 don't know if the documents are relevant, but what would be the
10 harm; let's just turn them over. That's not the way discovery
11 works. And to suggest that simply because we're curious about
12 a document -- and really, you know, Mr. Honik is being polite,
13 and I certainly appreciate that, they're curious about a
14 document, but really what they're saying is, we don't believe
15 you, Mr. Trischler, and we don't believe your client when you
16 say these documents aren't relevant. That's not the way
17 discovery --

18 JUDGE VANASKIE: We have been down that road before
19 and that's why we used a production of a sample of documents in
20 a scenario very similar where there was this, "I don't believe
21 you," and all these documents aren't responsive.

22 MR. HONIK: Your Honor, I do believe Mr. Trischler.
23 The problem is this, and we can't lose sight of this: We
24 negotiated for months and months and months and the Court
25 entered an order that identified the custodians and identified

1 custodial -- or identified terms, search terms. This isn't
2 just some random collection of documents. These are hits using
3 terms that were negotiated and have now been embodied in an
4 order. They're not just a document sitting in the corporate
5 vault. They are documents that were hits because they had
6 terms like Lantech, like valsartan, like o-Xylene failures.
7 These are all the issues in the case. And so it's not a --
8 it's not a trust issue. It's a, we've been down this road; we
9 already have a lens through which these documents were
10 identified; they are producing 35,000 but withholding 20.
11 We're now at the decisional point where somebody needs to look
12 at them. And, respectfully, I think what Mr. Trischler has now
13 confirmed is that, mechanically, it's a matter of pushing a
14 button and getting them in front of you. And I would invite
15 the Court to look at as many as you feel comfortable looking at
16 from the 4,100, and if they look, as we suspect they do,
17 entirely relevant, directly relevant, I certainly would
18 request, respectfully, that we have them, because we've got Mr.
19 Glover's continued deposition this Friday, and we've got Day 3
20 I think on either the 18th or 25th. What I want to do is honor
21 what Mr. Trischler said to the Court, which is not have to
22 petition the Court to redepose this gentleman or any of their
23 witnesses because they didn't give us the documents in a timely
24 fashion.

25 MR. TRISCHLER: Well, Your Honor, the interesting

1 thing is that these are all custodial files, none of which
2 belong to Mr. Glover and none of which they -- all the
3 custodial documents belonging to Mylan have been produced, and
4 they're free to depose Mr. Glover on that. They already -- as
5 Mr. Honik's pointed out, they've already done it for a day.
6 We've already got nine other Mylan depositions lined up. The
7 plaintiffs are going to have plenty of opportunity to ask the
8 custodians that they're seeking to depose about relevant
9 documents that are in their files.

10 And the one thing I think we can all agree on is, Mr.
11 Honik's right, we have been down this road before. We did
12 negotiate search terms. We did agree on a court order. And
13 the agreement in the court order says that when you have
14 unrelated documents that are hit on as part of the search
15 terms, you don't have to produce those unrelated, irrelevant
16 documents; and that's what we've done. So if we're going to
17 operate under the court order, that's fine, let's do it; but it
18 cuts both ways. Curiosity doesn't overcome the burden that the
19 plaintiffs have of showing that the documents are relevant.
20 And for the documents to be discoverable, the documents have to
21 be relevant. The order of the Court says we don't produce
22 irrelevant, unrelated, nonresponsive documents just because
23 it's part of a family of documents that are hit on in search
24 terms.

25 MR. HONIK: Your Honor --

1 MR. TRISCHLER: I find that, again, it's not an
2 argument of burden but I find it irresponsible to overturn the
3 Rules of Civil Procedures and say just turn over 4,000
4 documents because we're curious or because they might be
5 relevant. I don't think that's the proper approach. I don't
6 think any defendant should be held to that requirement.

7 MR. HONIK: Your Honor needs to be aware that Mr.
8 Glover was not a custodian whose custodial file was produced.
9 They refused to do that. And yet he is a 30(b)(6) corporate
10 designee on topics, among other things, testing and Lantech.

11 These documents, these 35,000 documents, come from 60
12 different custodians. So this is actually the gristmill of
13 material that we have, the limited amount of material that we
14 have to examine this 30(b)(6) witness, and the identifiers that
15 we set out in our letter to the Court are exactly the 30(b)(6)
16 topics that Mr. Glover's being examined on.

17 How can -- how can a document that's about a
18 Lantech -- a series of Lantech transactions and processes that
19 are the very subject of this case, and testing, two topics that
20 are in the notice of deposition, the 30(b)(6) topic for which
21 Mr. Glover is being produced, how can they not be germane to
22 his examination?

23 MR. TRISCHLER: They're not germane because they have
24 nothing to do with valsartan. I'm looking at the documents
25 right now, Your Honor, and I'm looking at a spreadsheet on the

1 status of nitrosamine testing that has nothing to do with
2 anything that happened at Unit 8, it has nothing to do with
3 valsartan. You know, we keep talking about ancient history.
4 Mr. Glover brought up -- they brought up the fact that Mr.
5 Glover, there hasn't been a custodial production for him.
6 Judge Schneider ruled there didn't need to be.

7 And so what this really comes down to is an attempt
8 simply to overturn and reargue issues that have already been
9 litigated, decisions that have already been made about what
10 needs to be produced and what's not produced, and, you know, as
11 I said, we've laid eyes on these documents, made determinations
12 that are not -- that they're not responsive, we've made
13 productions in accordance with the discovery rulings of this
14 Court, and simply because the plaintiffs are not sure about
15 file names, they want to set that all aside. It's not fair --
16 it's not fair to Mylan, it wouldn't be fair to any defendant.
17 It's not the proper standard for making discovery rulings.

18 JUDGE VANASKIE: But there has to be some process in
19 place by which you assess whether or not the determination of a
20 document being nonresponsive is tested. There has to be some
21 process in place for that. As I said, in another matter we did
22 random sampling and made a determination in the case that there
23 were very few, if any, responsive documents. But it's a
24 cumbersome process. I'm not looking to do that.

25 I'm wondering, I'll wonder out loud here, whether the

1 most expedient way to handle this matter is say produce the
2 4,200 documents. The burden of producing -- of reviewing them
3 would be on them, not on you. It's already --

4 MR. TRISCHLER: If I were to -- if we were to make
5 rulings because it's expedient and efficient in lieu of due
6 process and fairness to litigants, I don't think that would be
7 the appropriate approach.

8 JUDGE VANASKIE: I don't see any due process problem
9 here. Maybe I'm missing it.

10 MR. TRISCHLER: Well, there's been no motion filed, no
11 review of the documents, simply a representation that we're
12 curious about them, and if the Court's going to entertain that
13 in a order, we'll just produce them because it'll be easy, I
14 suggest that that's a due process concern, without looking at
15 the merits of the argument and simply saying, let's set it all
16 aside because it would be the efficient and speedy thing to do.
17 I don't think that's a proper approach.

18 JUDGE VANASKIE: Well, I think, with all due respect,
19 we're to be concerned with efficiency and with costs and that's
20 what I'm trying to avoid, the delay that this process may
21 entail.

22 MR. TRISCHLER: We've already incurred substantial
23 costs, Judge. There's already been over -- my client's already
24 produced over 250,000 documents, millions of pages of documents
25 that have cost them millions and millions of dollars, and so

1 when the suggestion being made that we really need a few more
2 documents that we're not sure are relevant so we can
3 cross-examine this witness doesn't fly, respectfully.

4 JUDGE VANASKIE: All right. Mr. Honik?

5 MR. HONIK: Your Honor, Mylan is protected here.
6 There is a protective order. They have the ability to claw it
7 back. Mr. Trischler has already confirmed with a keystroke we
8 could have these documents. And let me just say how this
9 problem really arose.

10 Over a year ago, whenever it was that we negotiated
11 search terms and custodians, we didn't really understand that
12 this was a process problem that translated across products and
13 manufacturing units. That is to say that this solvent problem
14 was very pervasive and that nitrosamines were present in a lot
15 of different places. And when the FDA went and investigated
16 it, and this is the second issue that we have with Mylan, the
17 one that I termed as "ripe" but I think Mr. Trischler will
18 disagree, one of the core set of things that Judge Schneider
19 ordered was all correspondence between the companies, in this
20 case Mylan, and the FDA and relevant attachments. And, indeed,
21 they've produced for us inspection reports, correspondence and
22 the like concerning one of their units or the unit where they
23 made valsartan. That is Unit 8.

24 However, subsequent to the two FDA inspections there,
25 in Unit 7, a sister unit, there was an FDA report that

1 significantly relied upon observations from the Unit 8
2 inspection because the nitrosamine-recovered solvent issue was
3 present in both units. And so you can't really read the Unit 8
4 reports without understanding what they said about Unit 7.

5 That's an example of this problem that's now very
6 pervasive in the Mylan part of this case where nitrosamines,
7 its presence, due to this process failure because of the
8 recovered solvent, is across some of their units. And they
9 have -- they've refused to produce the Unit 7 correspondence,
10 which is part of the FDA discovery, again, on this rather
11 narrow sense or view that it's not the unit where the valsartan
12 was produced.

13 I think this issue is ripe, too. I think it's -- it
14 cries out for some attention because it's going to require us
15 to redepose Mr. Glover and others until we get that.

16 So, this is all of a piece, and I agree with the Court
17 that there needs to be a process to determine whether these
18 documents which are claimed to be unresponsive or fall outside
19 the narrow guidelines of the core discovery, the FDA
20 communications, it needs to be looked at sooner than later so
21 that we can avoid the very problem that Mr. Trischler sought to
22 avoid by getting the extension that we're now working under.

23 And I would respectfully request, Your Honor, that
24 there's no due process harm, there's a protective order entered
25 that protects the integrity of their documents, there's an

1 ability to claw it back, and I think the idea of Your Honor
2 taking a look at the documents, and, in particular, of the
3 4,100 we've listed, if you look at the letter, ten or 12, if
4 you do no more than that, Your Honor, I think you'll get a
5 terrific flavor of it and I would then encourage the Court to
6 direct the production of all 4,199 of the documents that we've
7 identified.

8 I think you're on mute, Judge.

9 JUDGE VANASKIE: My dogs were around.

10 Are you suggesting, Mr. Honik, that I look at the
11 documents at the bottom of Page 27 and top of Page 28 --

12 MR. HONIK: I do, Your Honor.

13 JUDGE VANASKIE: -- and make a determination if all or
14 the overwhelming majority are not responsive to say okay?

15 MR. HONIK: So, Judge, I think that because of the
16 urgency of this matter and the fact that we're in the middle of
17 this 30(b)(6) deposition with a witness who has more than 50
18 percent of the topics, I would -- I would suggest, because
19 there's no difference between Mr. Trischler sending you 15
20 documents or 4,000, electronically speaking, that you get the
21 4,199 and look at the 15 or so documents and then -- and then
22 go from there. Because I think once you see that the ones
23 we've highlighted are perhaps the best examples, I think the
24 Court will see pretty readily, if you look at additional ones,
25 by way of cross-sampling or sampling, that we've got a massive

1 amount of documents from that cache of 4,100 documents that
2 should be turned over to us immediately. You should get them
3 all.

4 JUDGE VANASKIE: Mr. Trischler?

5 MR. TRISCHLER: Your Honor, the issue of the documents
6 first, I have -- if the Court wants to do an *in camera* review
7 of the documents highlighted by the plaintiff in their --

8 THE COURT REPORTER: Excuse me, Mr. Trischler, you're
9 breaking up. I could not hear you. I apologize.

10 MR. TRISCHLER: Should I start over?

11 THE COURT REPORTER: No. I could just tell you where
12 you were.

13 "-- if the Court wants to do an *in camera* review of
14 the documents highlighted by the plaintiff in their --"

15 MR. TRISCHLER: -- we will certainly comply with that
16 directive and provide Your Honor with the -- with the
17 documents. You know, if we haven't made the right call on
18 relevance and responsiveness, then the documents should be
19 produced. So if Your Honor wants to review, as I said, some
20 subset of documents or the 4,100 that the plaintiffs have
21 culled out, I'll follow the Court's directive as far as that
22 goes.

23 Can I address the point that Mr. Honik raised with
24 respect to Unit 7?

25 JUDGE VANASKIE: Yes.

1 MR. TRISCHLER: All right. Your Honor, there was a
2 ruling that was entered by this Court in discovery that made --
3 it was crystal clear that regulatory communications should be
4 produced in this case with respect to those facilities where
5 the defendants manufactured the valsartan API, the active
6 pharmaceutical ingredient, or where the valsartan finished dose
7 products were manufactured.

8 What the plaintiffs are now seeking with this latest
9 motion is to, once again, disregard Macro Discovery rulings and
10 say, even though, Mylan, you've produced all regulatory
11 communications for Unit 8, which is where the API is
12 manufactured and where one of the finished dose products is
13 manufactured, and you've produced regulatory communications
14 with your Nashik facility and your Morgantown facility where
15 other valsartan-containing finished dose products were
16 produced, so you've complied with the order but I don't care,
17 we don't care, we want more, we want your documentation
18 regarding regulatory communications for Unit 7, a facility
19 where valsartan was never made, a facility where valsartan API
20 has never been produced, but we want it notwithstanding what
21 Judge Schneider's discovery ruling says.

22 And if we're going to go back and revisit discovery
23 rulings that were made six to eight months ago for Mylan, and
24 then I fear what usually happens in this litigation, for then
25 every other defendant, we're never going to finish discovery in

1 this case.

2 And so this issue -- this issue probably is ripe on
3 behalf of Mylan, if Your Honor wants to, but there's not really
4 much more to discuss. We have a court order, we produced
5 documents in response to the court order, and now the
6 plaintiffs are saying it's not enough, we want to go back and
7 we want to revisit that and we want regulatory communications
8 for, now they say Unit 7 but the next part of the slippery
9 slope will be probably for all facilities. And if so --

10 MR. HONIK: Your Honor, respectfully --

11 MR. TRISCHLER: -- it's contrary to the court order.

12 MR. HONIK: Your Honor, respectfully, that's not
13 correct, and no one wants to complete discovery with Mylan more
14 than me. And we want to do it efficiently and we've been doing
15 it efficiently.

16 Respectfully, when this order, now long ago, was
17 placed on the docket, Judge Schneider was abundantly clear that
18 if for good cause there was reason to revisit some of the very
19 granular rulings that he made, that we, we, all of us,
20 defendants and plaintiffs alike, are free -- we're free to do
21 that.

22 What I would encourage Your Honor to do, because I
23 know this is a -- this is a granular issue and if you haven't,
24 as I'm sure you haven't, been following all of the nuances,
25 each of the defendants' root cause analyses are a bit

1 different. And Mr. Trischler is literally correct that Unit 8
2 was the place where valsartan API was made, but what we
3 discovered that Mylan's root cause analysis, for example, is
4 different than ZHP's. ZHP had a problem with the creation of
5 their tetrazole ring. The problem with Mylan, as we've now
6 come to discover, and only discovery could have revealed this
7 to us, is that they were using recycled solvent that -- that
8 placed an impurity into the chemical process. And they did
9 that at more than one facility. And as you could have
10 predicted, when the FDA discovered this, and there's no dispute
11 about it, they not only examined the use of this recycled or
12 recovered solvent in Unit 8, they also looked at it with a lot
13 of care in Unit 7, all under the guise of this FDA recall.

14 So what am I encouraging the Court to do? I would ask
15 the Court, respectfully, to look at three things: The
16 inspection report from December 10, 2018, and June 15, 2019,
17 from Unit 8, full stop, and the February 28th, 2020, Unit 7
18 inspection, and you will see that they're all connected. You
19 will see that they all look at the very theory of liability
20 that we have in this case. And I respectfully submit that if
21 you see that connection, Your Honor, you will see that we've
22 made a very tailored request to Mr. Trischler. We're not
23 fishing. We're simply asking him to give us the correspondence
24 between the company and the FDA with respect to that Unit 7
25 inspection. Why? Because it's inextricably woven and

1 connected to the Unit 8 inspection. Any reasonable person
2 reading those reports in *pari materia* will see the
3 connectivity; and I think if the Court were to do that, you'll
4 see instantly why we've asked for them, why we've tailored our
5 request just to that correspondence and to that one report and
6 the relevant attachments. It's not a large request, it's
7 highly tailored, and I think the Court will be able to see it
8 for itself if you do nothing more than look at those three
9 inspection reports.

10 I think you're muted, Judge.

11 JUDGE VANASKIE: I keep forgetting I'm muted.

12 I haven't looked at the inspection reports yet so it's
13 premature for me to do anything on this matter. I would be
14 inclined to look at them and perhaps we'll have another
15 discussion about this, this particular issue dealing with Unit
16 7.

17 Getting back to the nonresponsive documents, I would
18 ask, I think there are 12 documents that are listed at the
19 bottom of Page 27 going over to the top of Page 28, I'd ask
20 that they be produced to me for my review *in camera*. I would
21 ask that the 4,200 documents -- that I receive a listing by
22 Bates number of the 4,200 documents that I would then run a
23 random sampling program against to identify particular
24 documents to be produced so I can review, on a statistically
25 valid basis, the documents to determine the degree to which

1 they are responsive or not responsive.

2 How much time do you need, Mr. Trischler?

3 MR. TRISCHLER: Well, I was going to first ask, Your
4 Honor, how would you propose that we submit the 12 documents
5 and the list to you?

6 JUDGE VANASKIE: You could email them to me. I don't
7 see that as a problem. Email it to me at my law firm address.

8 MR. TRISCHLER: Okay. And then so I will email the
9 documents and the list to you and cc, without enclosure, the
10 Plaintiffs' Steering Committee. Is that acceptable?

11 JUDGE VANASKIE: That is acceptable.

12 MR. TRISCHLER: All right. And I would defer to Mr.
13 Stoy, if I may, as far as what time it may take to accomplish
14 that task, Your Honor.

15 JUDGE VANASKIE: Okay.

16 MR. STOIY: Your Honor, this is Frank Stoy. We should
17 be able to have the documents to you as early as this evening.
18 And I would propose that we would just send the spreadsheet
19 that plaintiffs have provided to us, which contains the Bates
20 numbers of the documents which you could then use to generate a
21 random sample.

22 Once you have the document Bates numbers that you
23 wanted us to pull, you could let us know and then we can pull
24 them and it shouldn't take very long to have that done.

25 JUDGE VANASKIE: All right. Very well. All right?

1 MR. HONIK: Yes, sir.

2 JUDGE VANASKIE: Anything else on this issue?

3 MR. HONIK: No, Your Honor. Thank you.

4 JUDGE VANASKIE: All right. Thank you very much.

5 The next matter I have concerns the retailer and
6 wholesaler discovery issues.

7 MR. STANOCH: Yes. Good afternoon, Your Honor. David
8 Stanoch for plaintiffs.

9 I think the parties' respective letters spell this out
10 very nicely and crystalize the issue for Your Honor.

11 Simply put, we served draft discovery December 8th,
12 2020. It's now March 10th, 2021. We've had a couple calls.
13 We've been told by both defendants, they say this in their
14 letter, that they don't think they should have to negotiate
15 discovery, not even produce discovery, negotiate any further
16 discovery, while the scope of the complaints are in flux, and
17 that it should come to a halt. It's been three months that
18 we've lost, essentially, this entire period since December 8th.
19 We could have just propounded these requests under Rule 30 and
20 34, they would have served their objections in 30 days, this
21 would have been teed up at the end of January already. Yet,
22 here we are, because we said we would talk to them and took
23 them at their word that they were ready to talk substantively
24 and engage in discussions and provide the red lines and we
25 don't have it.

1 We disagree with both sets of these defendants, Your
2 Honor, the wholesalers and retailers, that they should be
3 immune to discovery at this point. There's never been a stay
4 of discovery in this case. Multiple defendants raised that
5 issue before with Judge Kugler or Magistrate Judge Schneider,
6 directly and obliquely, and there's never been such a stay.
7 Retailers dicker that, oh, well, they're not seeking a
8 constructive or actual stay. Well, when you say you want to
9 pause negotiation of discovery and answering discovery? Judge,
10 that's a stay.

11 So we think that we've already lost all of the time
12 between December and now, which we had gained from the parties'
13 frantic efforts to have Judge Kugler grant an extension, and
14 that we need to get going with these two defendants. They're
15 party defendants. If defendants have their way, Judge, and say
16 that nothing should happen until the amended complaints are
17 done -- Ms. Smith mentions that we may have a final Motion to
18 Dismiss order in a few days, let's say Friday, from Judge
19 Kugler. We then have 30 days to file amended complaints. They
20 will oppose our motions for leave to file those amended
21 complaints. We then file replies. We then argue that before
22 Judge Kugler. Next thing you know, Judge, here we are in the
23 middle of the summer and we still have nothing to show for all
24 of this.

25 We think, at a minimum, that we should get substantive

1 red lines to the draft document requests and deposition notices
2 from these two sets of defendants, and that any disputes be
3 raised to Your Honor at the next CMC status call; and then we
4 could proceed and Your Honor can decide then, once the actual
5 language is set even, can decide whether there may need to be a
6 pause or stay or what have you in answering it, but at least
7 then we're ready to go and we have it on hand. And if Your
8 Honor needs to narrow it or modify it, he can, but that way we
9 don't lose even more time now in this case for this discovery.

10 JUDGE VANASKIE: All right. Who will be addressing
11 this on behalf of the retailer and wholesaler defendants?

12 MR. GEOPPINGER: Your Honor -- Your Honor, Jeff
13 Geoppinger on behalf of the wholesalers. Ms. Johnston will
14 speak for the retailers.

15 Your Honor, the bottom line here is there are orders.
16 There are orders on the Rule 12 motions. They radically alter
17 the case against my client and the wholesalers, generally, to
18 the extent that we are out of the case. Order Number 2
19 dismissed us, full stop, out of the case.

20 The wholesalers shouldn't be required to expend lots
21 of time and money and effort on discovery that's untethered to
22 any claim in the case. We need amended complaints. Okay? The
23 plaintiffs originally were to amend their complaints by January
24 27th. They've taken steps to extend that deadline to now 30
25 days until after the last order. The wholesalers are

1 essentially -- you know, they don't want to file an amended
2 complaint until they have all the orders in front of them; and
3 we're essentially asking for the same thing, Your Honor. We
4 don't want to be made to undergo discovery and to negotiate
5 discovery and to be involved in discovery in a case, candidly,
6 we're not right in right now until the plaintiffs have at least
7 filed their motions to amend the complaints.

8 I've heard a lot about speed and expediency and we're
9 in a rush and we've got to push forward today. I hear a lot of
10 that when the defendants are on the hook for something, but I
11 note that the plaintiffs have taken their time in filing these
12 amended complaints. And they certainly can do that. They can
13 do it whenever they want. They are the master of their
14 complaint.

15 So I respectfully suggest, Your Honor, that the
16 plaintiffs should file their master -- their amended -- or,
17 excuse me, their motions to amend the complaints, we'll see
18 what claims are even possibly in this litigation still against
19 the wholesaler defendants, and we'll go from there.

20 The motions to dismiss have to mean something, Your
21 Honor. The judge spent a lot of time on them and they are
22 there, and the plaintiffs can't just proceed in discovery like
23 they don't exist and they didn't have any effect on the claims
24 in the case.

25 The plaintiffs say there's never been a stay during

1 pending, you know, motion practice. I mean, that's a little
2 disingenuous when the motion practice is extended out because
3 the plaintiffs have sought to do so.

4 I would suggest, Your Honor, you know, as a
5 compromise, if any, that maybe we would -- we would trigger the
6 defendants' meet and confers and negotiation of these, and Ms.
7 Johnston will speak for herself, but, you know, at least off of
8 when the plaintiffs decide to file their motions to amend the
9 complaints.

10 JUDGE VANASKIE: All right. Ms. Johnston. I think
11 you're muted. We are not hearing you.

12 MS. JOHNSTON: I'm muted.

13 JUDGE VANASKIE: Okay. Now we hear you.

14 MS. JOHNSTON: Is that better? Okay. This actually
15 happened earlier today on another Zoom. So let me know if I
16 drop at all.

17 Again, Your Honor, good afternoon. Sarah Johnston for
18 the retailer defendants. My colleague, Kristen Richer, I
19 believe, is also here. Ms. Richer and I have been working for
20 the pharmacy defendants to negotiate discovery matters here and
21 she may have some additional things to add if I miss anything.

22 I think Mr. Geoppinger said it well. I think that
23 there are three fairly fundamental but important misstatements
24 or misrepresentations in plaintiffs' submissions to the Court.

25 I think first is the idea that we are seeking a

1 constructive or actual stay on discovery, and I don't think
2 that that's something that could even be possible given the
3 fact that we are continuing and have continued to participate
4 in the discovery process through not only our significant first
5 round discovery productions, which were just completed in the
6 fall of last year, and through the DFS process which continues
7 up to now. We are active participants in discovery. We are
8 not seeking to shirk the obligations that have already been
9 ordered or agreed to, and those continue.

10 The second issue that we disagree with plaintiffs on
11 is the idea that we are not willing to participate in the
12 meet-and-confer process at this time. I think that that's
13 disingenuous and we think that the history that's laid out in
14 plaintiffs' letter is incorrect.

15 Following a significant number of meet and confers
16 with plaintiffs' counsel about a month ago, we sent the letter
17 that's attached as Exhibit C to the defense submission from
18 yesterday. Exhibit C is a letter laying out not just the fact
19 that we think that it does make sense to press pause on --

20 JUDGE VANASKIE: We lost you again.

21 MS. JOHNSTON: Are you there? Can you hear me?

22 JUDGE VANASKIE: Yes, now we can.

23 MS. JOHNSTON: Sorry about that. I think I need a
24 restart of the computer, not of all this.

25 So, Your Honor, we sent a letter to plaintiffs'

1 counsel about a month ago. It laid out our positions. We've
2 attached it to our submission. I won't go through the details
3 of that because I don't think it's necessary but, yes, in the
4 first page of a six- or seven-page letter we say we do not
5 think it makes sense for further discovery to be negotiated at
6 this point for all the reasons that Mr. Geoppinger stated,
7 because the pleadings are in flux and because plaintiffs have
8 extended the deadline to move to amend.

9 We are in a very similar position to the wholesaler
10 defendants in that the claims against the retailers and
11 pharmacies have been significantly pared down. We're not
12 talking about a stay at the outset of an MDL where motions to
13 dismiss are pending. We're talking about a litigation that is
14 two years in and we are facing substantially fewer, if any,
15 claims, depending on what the outcome of the sixth forthcoming
16 order is.

17 With that said, we've sent this letter and, yes, we do
18 lay out that preliminary position but then go on for six pages
19 outlining each place where we believe that the discovery either
20 is unclear and ask for a clarification or we believe it's
21 duplicative of discovery that we've already agreed to or
22 already produced and asking for clarification.

23 The only dispute that I hear from plaintiffs as to
24 what we've done in the meet-and-confer process is not adhering
25 to a traditional red line versus a different means of meeting

1 and conferring. That letter did not come without substantial
2 effort on our parts to not only talk to plaintiffs but talk to
3 our cohorts in the retailer and pharmacy group to work out what
4 it is that we found to be problematic or questionable about the
5 discovery and then to communicate that to plaintiffs. That
6 letter has gone unanswered.

7 So if we're talking about the passage of time and
8 who's responsible for lost time, the letter that was sent on
9 February 16th that we had never received an answer to that lays
10 out our position is a pretty significant culprit in the
11 lost-time argument.

12 And then I think the third issue here that we feel
13 there is a misrepresentation of is the issue of timing.

14 JUDGE VANASKIE: I'm sorry, I missed that.

15 MS. JOHNSTON: Is the issue of timing.

16 JUDGE VANASKIE: Okay.

17 MS. JOHNSTON: I think Mr. Geoppinger touched on this
18 and I think that, you know, his point is correct, but when
19 plaintiffs say we could have served this discovery in December
20 and gotten responses by now, yes, that's true, in a litigation
21 in which that was the discovery track. Here we had CMO 22
22 which stated that additional downstream discovery was to
23 commence on April 1st. That deadline has been continued by 60
24 days with additional discovery as to the downstream defendants
25 to commence on June 1. So to now have to brief and argue this

1 issue before the Court at this time when we are talking about a
2 triggering deadline that won't begin until June 1st is -- is,
3 again, a misrepresentation. And so I think that's the position
4 we find ourselves in --

5 THE COURT REPORTER: I'm sorry, Ms. Johnston, you
6 broke up.

7 MS. JOHNSTON: My apologies. I think I'm wrapping up,
8 if you can hear me.

9 THE COURT REPORTER: Yes.

10 MS. JOHNSTON: But I think that's our position, Your
11 Honor. I don't know if Ms. Richer has anything to add or if
12 there are any questions, but we're certainly happy to discuss
13 this further to the extent that there are questions.

14 JUDGE VANASKIE: Thank you.

15 Ms. Richer, do you have anything to add?

16 MS. RICHER: No, Your Honor. I think Ms. Johnston
17 really captured all of our positions on this. I'm happy to
18 answer any questions you may have.

19 JUDGE VANASKIE: Well, let me ask one question and I
20 can ask it of all three of you on the defense side.

21 What's involved in submitting back a red line version
22 of the RFPs, the requests for production or the written
23 discovery requests?

24 MS. RICHER: Your Honor, I can speak to that at least
25 as to the retail pharmacy defendants.

1 JUDGE VANASKIE: All right.

2 MS. RICHER: We did contemplate sending plaintiffs an
3 RFP but as we explained in the February 16 letter, candidly, we
4 did not think that that would be constructive given how
5 foundational some of their questions were. And one thing that
6 I, you know, as the person who was working most closely on this
7 for a good amount of time, took umbrage to was the suggestion
8 in plaintiffs' letter, and in prior correspondence to us, that
9 we were simply objecting to the scope of discovery.

10 I think if Your Honor looks at the contents of the
11 letter, I mean, we laid out RFP that are very specific
12 questions about what plaintiffs were seeking, why it was
13 necessary, given the discovery already produced to date, and
14 why it was necessary, given extensive discovery, overlapping
15 discovery, from some of the upstream entities on those very
16 same issues. And the idea that we're simply talking here about
17 negotiating some simple document production is just simply not
18 the case. If Your Honor looks at the draft proposed by
19 plaintiffs, they're seeking extensive custodial discovery and
20 some of the requests as drafted are quite unwieldily.

21 So rather than do something that, frankly, I would
22 have found offensive had I received it, which is receiving a
23 red line that completely crossed everything out, just asked a
24 bunch of questions, we really tried in good faith to explain
25 where we were struggling with these RFPs and to ask questions

1 that would solicit helpful responses from plaintiffs so that we
2 could move things forward.

3 We now find ourselves in the situation explained in
4 the letter and by Ms. Johnston and Mr. Geoppinger regarding the
5 awkward timing of this as it relates to motions to dismiss and
6 the Court's rulings on those. So we think it's worth making
7 that point. But the idea that we simply aren't trying or we're
8 refusing to participate or that we haven't been participating
9 and trying to work this out amongst our group of, you know,
10 approximately ten retailers is simply not the case.

11 JUDGE VANASKIE: All right. Thank you, Ms. Richer.

12 MR. GEOPPINGER: Your Honor, if I may just add to
13 that.

14 JUDGE VANASKIE: Go ahead, Mr. Geoppinger. Go ahead.

15 MR. GEOPPINGER: I agree with what Ms. Richer is
16 saying in terms of the specifics on the requests. The bigger
17 picture issue, Your Honor, is, as Mr. Stanoch told you, those
18 were served before there were motions to dismiss -- or, excuse
19 me, orders on the motions to dismiss. So, you know, as I note
20 in the letter, the discovery has to be tied to the plaintiffs'
21 case and that discovery was tied to claims that --

22 THE COURT REPORTER: I'm sorry. "Was tied to claims
23 that --"

24 MR. GEOPPINGER: It was tied to a number of claims
25 that don't exist anymore.

1 Now, some of them will not be coming back. They were
2 dismissed with prejudice. The plaintiffs will file a motion to
3 amend their complaint and we will see how that plays out. But
4 at present, there's a bunch of claims that were at issue on
5 December 8th that are no longer at issue. And the discovery
6 should be tied to the claims so it makes perfect sense, from
7 our perspective, to have at least an understanding of what it
8 is the plaintiffs are going to do with respect to an attempt to
9 amend the complaint before we are in a position where we have
10 to respond to them about what requests we think are, you know,
11 in play and which are not.

12 If we respond on requests that we don't think are in
13 play, I feel -- you know, I'm concerned that we're going to
14 hear an argument back that they are because we didn't respond
15 sufficiently enough when we were unsure what the pleadings
16 were, which is why we'd like to know, from the wholesalers'
17 perspective and the retailers', I understand, as well, what is
18 it that the plaintiffs plan to do with these, you know, these
19 motions to amend the complaints. Where are we going on these
20 claims? They certainly aren't going to be as broad as they
21 were on December 8th, and we should have that -- we should have
22 the visibility on that before we're in a position to do further
23 discovery.

24 JUDGE VANASKIE: Thank you, Mr. Geoppinger.

25 Mr. Stanoch, have you replied to the February 16th

1 letter?

2 MR. STANOCH: Your Honor, we disagreed with the
3 premise because -- I've never been accused of
4 misrepresentations at all, let alone so much in one hearing,
5 Your Honor, when I'm simply quoting back their own letter
6 saying they want to pause and do not want to negotiate
7 additional discovery while the claims are in flux.

8 We don't need to meet and confer ad nauseam, Judge.
9 We met and conferred. This is the same thing you saw earlier
10 today. We explained to them in multiple calls what we want.
11 Judge, we attached these requests. They are not very large.
12 There's only nine different requests. They told us on the meet
13 and confer, Judge, that they couldn't even begin to answer a
14 request for organizational charts, Judge, organizational
15 charts. These other requests, these are not fishing, Judge;
16 they're very focused: Two requests for reps and warranties,
17 two requests for the agreement you used to purchase or sell
18 valsartan drugs, communications between -- inter-defendant
19 communications regarding the valsartan recalls, and inventory
20 management policies. Why is it important, Judge? Because
21 regardless of the claims, and I'll tell Mr. Geoppinger right
22 now, we are going to ament the claims, they are -- they are
23 still in the case now, they will be in the case. Ms. Johnston
24 concedes that her clients are in the case at least for some
25 claims right now. We shouldn't be penalized for having their

1 agreement to have an orderly process to amend the complaint at
2 once so we didn't have to file five or six motions for leave.

3 But the inventory management policies, Judge, it's for
4 the traceability, and that's going to cut across all of the
5 claims. They tell us they can't trace where these drugs go.
6 Okay. You know, we've explained to them that even if you can't
7 trace them with an identifier, and there was a lot of
8 litigation last year, over seven months, about this, Judge, and
9 I'm happy to send you hyperlinks about it because we had an
10 expert put in a declaration even, that they can't trace the
11 numbers, so we say, okay, well, then give us your inventory
12 policies. You're the largest distributors and retailers in the
13 country, if not the world, surely your personnel, who submitted
14 declarations before in this case, have some sort of policy to
15 tell us how often a product stays on the shelf or not. We've
16 explained this to them.

17 It's not my job, Your Honor, to know what documents
18 these defendants have. They say, what do you want for reps and
19 warranties? I gave examples of what we thought there might be
20 in terms of labeling, in terms of agreements. I don't know
21 what else it is. It's incumbent on them to tell me. If it's
22 truly been produced already, then that's the response to the
23 document request, Judge. There's been duplication alone that
24 they already produced it, that's an easy fix.

25 Their side insisted on document requests to the class

1 rep plaintiffs and over half of the new requests were
2 completely duplicative of the document requests to the economic
3 loss and medical monitoring Plaintiff Facts Sheets. And I said
4 this to them multiple times and their side's response was, it
5 doesn't matter, we didn't ask it in the precise way, we're
6 asking it again now to make sure. We're entitled to do the
7 same thing.

8 For example, they had to produce indemnity agreements
9 to us from the heavily negotiated requests the first time.
10 They heavily redacted supply agreements so they only gave us,
11 in some instances, the clause that says indemnity agreement. I
12 said, okay, well, now we're at the next phase of litigation, we
13 want the full agreement because it's going to show things like
14 the pricing, the supply terms, the reps and warranties. They
15 said, sorry, you didn't ask for that, serve a new request.
16 Okay, here it is. And now I'm being told that they don't
17 understand what the request is, that it's too broad and it's
18 duplicative.

19 I can go on and on with other examples, Judge, but
20 from my perspective, that's the flavor of what we're dealing
21 with, and the fact that now I'm hearing that we should pause
22 this until the summer before we even talk about four or five
23 categories of things, half of which are going to be centrally
24 located, including organizational charts?

25 I'm happy to answer any other specific questions,

1 Judge.

2 MS. RICHER: Your Honor, if I may.

3 JUDGE VANASKIE: You certainly may.

4 MS. RICHER: So I don't want to get into the weeds
5 here on what we are and are not saying about the RFPs because
6 to spite what Mr. Stanoch is saying, I think our letter on this
7 is pretty clear. And we are not saying it's impossible for us
8 to produce organizational charts, for example. We're saying
9 the way that you have drafted this request encompasses nearly
10 every employee at, for example, CVS, my client, a national
11 retail pharmacy chain with thousands of stores across the
12 country. You cannot possibly mean that you want organization
13 charts for every single individual who works at CVS or that
14 that would even be helpful to you.

15 MR. STANOCH: And I told you that, Ms. Richer. I told
16 you that. I'm sorry to interrupt, but I told you that.

17 JUDGE VANASKIE: Please don't interrupt.

18 MR. STANOCH: I apologize, Judge.

19 JUDGE VANASKIE: Please don't interrupt.

20 MR. STANOCH: You're right, Judge.

21 MS. RICHER: So the letter set forth a series of
22 questions and makes a number of comments about the requests as
23 drafted and asks for information.

24 A response to that would be helpful. Ideally, it
25 would not have been Mr. Stanoch arguing about it at every

1 conference on this. Ideally, we would have actually met and
2 conferred; but we are also suggesting that it doesn't make
3 sense to meet and confer given what's happening with the
4 pleadings.

5 I think, you know, there are a number of questions
6 laid out in this letter about each of these RFPs that are very
7 fair questions and answers to which would help both sides move
8 things along here. And, again, as we explained, given what's
9 happening with the pleadings, we don't think it makes sense to
10 have that conversation at the moment.

11 We think it would make -- you know, Mr. Stanoch seemed
12 very confident that plaintiffs' motion for leave to amend the
13 complaint will be granted. I don't think defendants think that
14 that's a given, certainly not with respect to every single
15 issue that was dismissed under the Court's Rule 12 rulings; but
16 at least, as Mr. Geoppinger said, at least seeing the pleadings
17 would certainly be helpful on that, and we haven't had an
18 opportunity to do that yet, in part, because the orders have
19 been issued on a rolling basis and, in part, because plaintiffs
20 have decided that they would rather respond all at one time
21 once all of those orders are issued.

22 You know, this isn't some sort of attempt to stay
23 discovery. We are very engaged. My client right now is
24 searching for documents responsive to the DFS. So the idea
25 that we're not participating in discovery in this case is

1 really not accurate. We are trying to do something that,
2 frankly, we thought --

3 THE COURT REPORTER: I'm sorry, you're going to have
4 to repeat that. You broke up.

5 MS. RICHER: We are suggesting that it makes sense to
6 push pause in the discovery hear, and, frankly, we thought it
7 made sense for both plaintiffs and defendants because it's not
8 efficient to negotiate about the specifics of RFPs in a vacuum.

9 JUDGE VANASKIE: Well, here's what I think. It seems
10 to me that there are some issues that discovery should be had
11 because it is likely that the wholesalers and retailers will
12 stay in the case in some way with respect to some claims. I
13 also agree with you that it's difficult, on the defense side,
14 to respond not knowing exactly what claims will survive. But I
15 heard some examples of types of discovery that you could meet
16 and confer on and agree it can go forward. It doesn't have
17 to -- we don't have to get one complete agreed-upon set of
18 requests before discovery can go forward at least to a limited
19 extent. And I think -- I think, respectfully, you should meet
20 and confer, there should be a response to that February 16th
21 letter, and you should be able to identify some areas on which
22 discovery can go forward and some where you simply say, we
23 don't think this is going to stay in the case so we shouldn't
24 have to produce that discovery.

25 So what I'm going to direct you to do is to, Mr.

1 Stanoch, to reply to that February 16th letter and also for you
2 all, after your replies, to meet and confer to see if you can
3 reach agreement on what is discoverable now, even though the
4 pleadings still are in flux. All right?

5 MR. STANOCH: Your Honor, David Stanoch for
6 plaintiffs. That's fine, Your Honor. I'd like to apologize to
7 Ms. Richer and to yourself for my interruption before.

8 We will do that, Your Honor. I would just note that
9 that letter you referenced was from the retailers. We don't
10 have any written communication from the wholesalers. We've
11 talked to them on the phone and they said they'd get us red
12 lines, they never did; and then they sent an email saying
13 whatever it says, it's attached to the letter. So I don't have
14 anything to respond to from them.

15 So I'd ask in the first instance, at least with the
16 wholesalers, they send us their response about our requests and
17 then we can get into the back and forth like you suggested with
18 us and the retailers.

19 JUDGE VANASKIE: All right. Mr. Geoppinger?

20 MR. GEOPPINGER: I agree with everything the retailers
21 put in their response, Your Honor. We have the same issues.
22 The requests, if we want to talk about the specifics of the
23 requests, I don't think we need to do that here, but I think
24 the letter lays out, you know, issues that are common to both
25 the retailers and the wholesalers, the entire downstream chain

1 for that matter.

2 So I think Mr. Stanoch can respond to that letter and
3 we'll -- and that will address our issues as well. I mean SOPs
4 are SOPs.

5 JUDGE VANASKIE: All right.

6 MR. STANOCH: That's fine for plaintiff, Your Honor.

7 JUDGE VANASKIE: Okay. Thanks. I think there's one
8 more issue.

9 MR. HONIK: Ms. Goldenberg is with us, Your Honor.

10 JUDGE VANASKIE: Okay. Oh, two more issues. Oh boy.
11 Camille, how are you? Are you holding up okay?

12 THE COURT REPORTER: Yes, Your Honor. Thank you.

13 JUDGE VANASKIE: Do you need a break?

14 THE COURT REPORTER: No, thanks. I'm fine.

15 JUDGE VANASKIE: All right. Well, before we go and
16 turn to Ms. Goldenberg on the -- well, I'll get to it. I want
17 to address the question of bellwether discovery from the
18 defendants.

19 MS. LOGAS: Yes, Your Honor, Alexandra Bach Logas,
20 counsel for Teva. I think this should be fairly shortly --
21 fairly easy to resolve.

22 The parties met and conferred yesterday about the
23 issues raised under the memo topic titled Bellwether Discovery
24 From Defendants relating to the fact sheets for both parties.
25 The parties have already made some progress on the issues and

1 are in agreement to continue meeting and conferring on these
2 issues. And the parties agreed yesterday, during our meet and
3 confer, that we would inform Your Honor that these items are
4 not ripe for discussion or resolution at today's hearing.

5 JUDGE VANASKIE: All right. Very well. That was an
6 easy one.

7 MS. LOGAS: I told you.

8 JUDGE VANASKIE: Yes.

9 Ms. Goldenberg?

10 MS. GOLDENBERG: Good afternoon, Your Honor. And I
11 appreciate you punting this to the end. I'd like to say that
12 our issues are short but I don't think that that's true. So
13 I'm happy to start with whichever one you want or we can just
14 take it from the top of our agenda letter.

15 JUDGE VANASKIE: Well, why don't you take it from the
16 top of your agenda letter. I'm going to turn a light on in
17 here because it's starting to get dark so I can look at my
18 notes.

19 MS. GOLDENBERG: Sure. So just for Your Honor's
20 reference then, we are starting on Page 18 of the letter that
21 was filed by plaintiffs, and the first issue that we've got on
22 here is the continued document production issues.

23 So I wanted to begin with the part where we've been
24 able to be accommodating to the defendants. We had a meet and
25 confer with Ms. Heinz on Thursday or Friday last week and she

1 indicated to us that they are in the process of collecting
2 these custodial files but that they are not going to be able to
3 meet the deadlines that Your Honor put in place. They are
4 willing to produce four of those custodial files in a first
5 production and I believe three in a second, and then they have
6 a number of other files that they decided to send snail mail
7 to -- or their client decided to send via snail mail to Ms.
8 Heinz, and those are apparently caught in Customs and that is
9 one of the reasons they're giving us for not being able to meet
10 the deadlines.

11 I informed Ms. Heinz that, candidly, I'd never heard
12 of anyone trying to ship hard drives that way and asked her if
13 it was possible to send these via FTP and if Aurobindo had
14 copies of these hard drives. She told me that they do have
15 copies of the data but hasn't volunteered to get the data any
16 faster.

17 So the first issue is, you know, we've told Ms. Heinz,
18 look, we are -- I don't want to say sympathetic because we need
19 the documents, but we understand that this is a big project and
20 we want to be flexible where we can, and we have volunteered to
21 give them an extension until April 9th to complete their
22 production under certain parameters that are outlined in our
23 agenda letter.

24 With that said, though, Your Honor, we do need to take
25 these depositions and we'd like the Court to adopt the schedule

1 that we put forth in our agenda letter that gives Aurobindo a
2 little bit of a cushion but at the same time gives us some
3 reassurance that at some point there will, in fact, be an end
4 to this process.

5 JUDGE VANASKIE: All right. Ms. Heinz.

6 MS. HEINZ: Good afternoon, Your Honor.

7 JUDGE VANASKIE: Good afternoon.

8 MS. HEINZ: This is Jessica Heinz for the Aurobindo
9 defendants.

10 Yes, after we received the Court's ruling last week,
11 we have been working feverishly over here to comply with the
12 Court's rulings. We rounded up a hundred -- over a hundred
13 attorneys who have started reviewing documents. We are in
14 possession of eight of the custodial files. Those are
15 undergoing review.

16 We did meet and confer with plaintiffs. We were able,
17 like Ms. Goldenberg just said, we were able to reach an
18 agreement that we will produce four on March 12th and I think
19 Ms. Goldenberg said three on April 1st, it's actually four. I
20 think their position statement may have included an incorrect
21 person but I reached out to Marlene yesterday to let them know
22 who exactly would be on that April 1st list.

23 We are currently waiting on an additional -- or the
24 remainder of the custodial files which is -- the last time at
25 the conference we knew it was -- I think it was eight and then

1 we had to disclose the Lantech focused custodians based on the
2 list of descriptions in Ms. Goldenberg's position statement and
3 we have identified those individuals. There are three of them.

4 So there are 11 custodial files that remain to be
5 processed by our eDiscovery vendor. Those are the ones that
6 were -- they had to be placed on hard drives and mailed
7 overseas and they are going through Customs. Unfortunately, we
8 don't have any control over how quickly that is going to take.
9 And I understand Ms. Marlene -- Ms. Goldenberg said that, you
10 know, she's not familiar with data having to be put on a hard
11 drive. This data was very large. It could not be transferred
12 via an FTP link. We had to put it on these hard drives; they
13 had to ship them overseas.

14 As I put in my position statement, it's very difficult
15 for us -- we do appreciate the plaintiffs, you know, working
16 these rolling deadlines out with us to give us a little bit
17 more time. The only reason why I haven't been able to agree to
18 a date is because I don't know how quickly these hard drives
19 are going to pass through Customs. Unfortunately, I don't have
20 any visibility into that process. I'm hoping that I may, next
21 week, which is why I would like -- I think it would be helpful
22 if we have an opportunity to provide a status report to the
23 Court and Ms. Goldenberg and hopefully we can meet and confer
24 further once that report is filed and reach an agreement that
25 works for both of the parties.

1 MS. GOLDENBERG: Your Honor, if I may, on the Customs
2 issue, there is no amount of data, I just confirmed in the
3 background with people smarter than me, that is too large to be
4 sent via FTP. It's just a matter of how long you leave the
5 computer on and how long it takes the transfer to go through.

6 So, again, with all due respect, there's just no
7 reason that these files needed to be sent this way. And while
8 it is, of course, defendant's prerogative how they want to
9 transmit their data, the deadline shouldn't depend on that.

10 JUDGE VANASKIE: Ms. Heinz?

11 MS. HEINZ: Your Honor, if I may, yes. This is 11
12 custodial files. It's over a million documents, I'm sure. The
13 files that we currently have, the eight that we currently have,
14 it's over a million documents just them. And so it's my
15 understanding that this is way too large to be transferred via
16 an FTP. The quickest way for us to get these documents was to
17 put them on these hard drives and ship them overseas priority
18 so that we could get them as quickly as we could.

19 I can assure Your Honor that we are working feverishly
20 and diligently over here to get these documents to the
21 plaintiffs, per Your Honor's ruling, and we do appreciate the
22 plaintiffs working with us so far on the eight that we
23 currently have, and we hope we can continue working with them;
24 but at this point I can't agree to a date because I just don't
25 know how -- at this point I just don't know how quickly they're

1 going to be released.

2 MS. GOLDENBERG: Your Honor, if I could suggest that
3 Ms. Heinz attempt the transfer via FTP or have some vendor test
4 this out before she says she can't do it, because what I
5 haven't heard her say is that she's tried. And I've heard from
6 multiple different people who I've checked with on this issue
7 that this really isn't a big deal; that a million documents get
8 transferred all the time and maybe it takes a day or two but it
9 certainly doesn't take three weeks and it certainly doesn't
10 involve Customs.

11 JUDGE VANASKIE: Ms. Heinz?

12 MS. HEINZ: Your Honor, like I said in my position
13 statement, I'm certainly willing to go back to my client and --
14 it's my understanding that they have tried to do this. If they
15 have not, I'll certainly let Ms. Goldenberg know and we can
16 certainly try that. It's my understanding this has been
17 attempted and that that's the reason why we did not go forward
18 with that and that's why they put them on these hard drives.

19 I am -- I can definitely go back and look into that
20 further and provide a status report to Ms. Goldenberg and with
21 the Court, if you prefer, but my goal is to try and get these
22 as quickly as I can, per the Court's rulings, and work it out
23 with the plaintiffs so that everybody has what they need for
24 these depositions.

25 JUDGE VANASKIE: Why don't you provide a status report

1 by next Tuesday as to where things stand with Customs, see if
2 there's been any movement. And also in your status report, let
3 us know what efforts have been made to do this by FTP or what
4 efforts will be made to do this by FTP, and we'll move it
5 forward that way.

6 Ms. Goldenberg, is there anything else to discuss at
7 this time?

8 MS. GOLDENBERG: Yes, Your Honor, there's a little
9 bit, but I'll try and tie it together.

10 So the next issue is sort of a combination between
11 Part A of the agenda letter under Aurobindo and the next part
12 about noncustodial sources.

13 What we have found in the document production, which,
14 you know, we've audited numerous times, and as you've probably
15 heard from the conferences that you've been a part of already,
16 we have questioned Aurobindo repeatedly on why these custodial
17 files are so small. And so this time around I wanted to make
18 sure we gave Your Honor some concrete examples, and those
19 appear on Page 18 of our agenda letter.

20 And so what you can see in the letter is that we've
21 shown Your Honor that, for example, in Steve Lucas's file, he
22 is someone who was deemed to be a critical person for a number
23 of issues dealing with the FDA after this recall, and somehow
24 we only have five emails that were produced for him prior to
25 the recall date.

1 Similarly, Jasleen Gupta, another custodian that, to
2 our understanding, was critical to this FDA recall and
3 investigation process, has no emails in her custodial file that
4 were produced after the recall.

5 We also looked at the noncustodial sources that we've
6 received documents from based on the production index that
7 Aurobindo has provided to us, and to the best of what we can
8 tell, the only source that they searched at all that's
9 noncustodial is a regulatory file, and that just doesn't cover
10 the scope of the Rule 34 requests that we asked for.

11 And so during meet and confers, we have repeatedly
12 asked Ms. Heinz for some explanation for why these custodial
13 files are so small and for whether or not we've received all
14 responsive documents from noncustodial sources relating to our
15 Rule 34 requests and we haven't gotten anything official or
16 even unofficial that gives us any kind of comfort in that
17 response.

18 And so what we're asking for this time around is a
19 list from Aurobindo of the noncustodial sources of data that
20 they looked at to respond to our Rule 34 requests, and then
21 also a list of data sources that were searched as to each
22 custodian because in reviewing documents yesterday, almost all
23 of the documents that I found in custodial files seem to have
24 file paths linked to Outlook. What I didn't see were things
25 that showed that hard drives had been searched, file cabinets

1 or anything else, and we all know that a person's custodial
2 file is certainly broader than just an Outlook program.

3 JUDGE VANASKIE: Ms. Heinz?

4 MS. HEINZ: Yes, Your Honor. Respectfully, I'm not
5 quite sure what the plaintiffs think is missing from the
6 productions. It's kind of hard for me to respond to what
7 Marlene is saying because I have produced everything that is
8 responsive from these custodial files and I can't remedy what
9 she's calling a deficiency if I don't know exactly why she
10 believes -- what she thinks is missing. I'm happy to continue
11 to meet and confer with her about that, but I don't think it's
12 necessary and I think it would be overly burdensome to make my
13 client engage in discovery on discovery, particularly when we
14 are working so hard over here to produce these 18 custodial
15 files that we are now ordered to produce before these
16 depositions get started. I think our time, you know, should be
17 devoted to that. And if Ms. Goldenberg thinks it's necessary
18 to go for discovery on discovery, you know, we would prefer to
19 file a motion for a protective order on that and have some
20 briefing deadlines on that because we think that it's overly
21 burdensome to engage in that, given everything else that's
22 going on. I think the priority is to get these documents out
23 ahead of these depositions.

24 JUDGE VANASKIE: Ms. Goldenberg, what are you looking
25 for? I have a note here that you want to confirm all sources

1 of data were searched. What would you expect would be produced
2 to provide that confirmation?

3 MS. GOLDENBERG: Sure, Your Honor. So I'm not looking
4 for anything super complicated. I just want a list of the
5 places that they looked for information. So for noncustodial
6 documents, it's just a list of databases or sources that they
7 searched.

8 So, for example, most companies have a central source
9 that -- where they can save data that's accessible to all
10 employees. They might also have an adverse event database.
11 And so all of these places are locations where we would expect
12 the defendant to be looking for documents that are responsive
13 to our requests.

14 So for noncustodial sources, it's just a list of what
15 they are, what they searched and whether or not documents were
16 produced from it; and for custodial sources, it's just a list
17 of the data sources that they searched to respond to document
18 requests for -- as to each custodian. And so, again, it's not
19 hard; it's just, we looked at this person's computer, they had
20 an iPad, they had a phone and they had a cabinet behind their
21 desk.

22 So I don't anticipate this taking very long,
23 especially if the defendants are telling us on the record that
24 they already did it.

25 JUDGE VANASKIE: Ms. Heinz, what would be so

1 burdensome about doing that?

2 MS. HEINZ: It's burdensome because we are in the
3 middle of a very large review and production right now that is
4 custodial discovery. This is discovery on discovery. And, you
5 know, it's a little disingenuous to say that she doesn't know
6 -- that Ms. Marlene -- that Ms. Goldenberg doesn't know what we
7 have searched for. We were just ordered to produce our SOPs,
8 which we have produced from all three of the Aurobindo
9 entities, along with copies of each entity's SOP index. We
10 have also produced our contracts with customers and we have
11 located some additional contracts with customers that we will
12 be producing very shortly. We have also produced our
13 certificates of analysis as well as our complaints and adverse
14 event reports. So all of that is in there and so it should go
15 without saying that those noncustodial sources were searched.

16 I don't understand why we need to spend the time going
17 through and providing a list to the plaintiffs when they have
18 what they need and they're not voicing exactly what's missing.
19 They just want some kind of reassurance that these sources were
20 searched and, respectfully, that's not the way discovery works.
21 You produce the responsive documents and then if something is
22 missing, you know, we're happy to go back and get it for them,
23 if it's -- if it's something relevant and responsive to the
24 request, that's not a problem. But we don't -- you know, we're
25 up against the clock on all these depositions as well and, you

1 know, we need to devote our time and resources to getting these
2 custodial productions out.

3 JUDGE VANASKIE: All right. Well, I'm not going to
4 order at this time any additional discovery on discovery. You
5 have representations that appropriate sources have been
6 searched. You're disappointed by the extent of production in
7 terms of what has been produced for particularly key persons,
8 but I don't think that gives me enough basis to say, now go
9 back and list every source that you searched so we make sure
10 that every relevant source was searched. I think I need
11 something more than that. And I'm sensitive as well to the
12 burden that's facing Aurobindo. Now, maybe it's old doing, I
13 understand that. I'm not making any judgment on that. I'm
14 just saying given everything that's going on right now, without
15 prejudice, Ms. Goldenberg, I'm not going to grant that request
16 now. You can always renew it later, especially if you come up
17 with something more concrete in terms of what may be missing.

18 MS. GOLDENBERG: Noted, Your Honor, and we'll come
19 back to you if we find some other basis to do that.

20 JUDGE VANASKIE: Thank you.

21 MS. GOLDENBERG: If we could turn to the next issue
22 then, there is an issue about one of the Lantech custodians.
23 My understanding, and Ms. Heinz can correct me if I'm wrong, is
24 that they are opposing our request to add Dr. A. Ram Mohan Rao
25 as a custodian relating to the Lantech issue. Ms. Heinz had

1 initially proposed three custodians, and those are listed on
2 Page 22 of our letter, it's Mr. Kasava Reddy, Mr. Ashok Reddy
3 and Mr. Nagaraju, who Ms. Heinz wasn't able to provide his full
4 name over the phone. I've had a chance to go through our
5 document database and research these three individuals and Mr.
6 Ashok Reddy does look to be an appropriate custodian, as long
7 as it's the same person that we referenced in our agenda
8 letter, and if Ms. Heinz can confirm that today, I think we're
9 fine.

10 The other two, I, you know, candidly, am just
11 concerned are not the right people and we wanted to make sure
12 that we addressed this as soon as we got this information from
13 Ms. Heinz so that we didn't wait until she produced the
14 documents and then we told them to go back and get us more.

15 And so Mr. Kasava Reddy's name only appears twice in
16 the documents that have been produced to date and if they're
17 telling us that this person is relevant to Lantech, then I
18 guess we're interested in hearing why. And for Mr. Nagaraju,
19 our understanding is that he's a quality assurance or
20 assistance person for a unit that didn't even make valsartan.
21 And so we had proposed the addition of an additional custodian
22 who is someone who had signed off on all of the FDA 483
23 responses about the issues that bring us to this courtroom
24 today; and so far I haven't received word from Ms. Heinz that
25 they're agreeable to that. Maybe she'll tell me I'm wrong.

1 JUDGE VANASKIE: And I just want to be clear on this.
2 Is that person a Dr. Ram Mohan Rao?

3 MS. GOLDENBERG: Yes, it is.

4 JUDGE VANASKIE: Okay.

5 MS. HEINZ: Yes, Your Honor, at the last conference in
6 the Court's ruling, Your Honor referenced the descriptions for
7 the Lantech focused custodians that plaintiffs were seeking and
8 ordered us to produce the custodial files for the appropriate
9 individuals responsive to those descriptions. We identified
10 three people based on that ruling, and Ms. Goldenberg has asked
11 me to identify which of those three custodians will testify --
12 or, I'm sorry, have information regarding those three
13 descriptions that she listed. I'm working on getting that to
14 her. I should have that to her shortly.

15 Those are the appropriate people. We disclosed them
16 pursuant to the Court's ruling. If -- and to the extent that
17 the plaintiffs are now seeking Dr. Rao's custodial file,
18 they've had the documents now from the Aurobindo U.S. entities
19 for months and months, since November was our -- the final
20 production deadline, and his name has been in there and we have
21 been meeting and conferring repeatedly since then, talking
22 about, you know, these custodians for Aurobindo Pharma Limited
23 and his name is now just coming up from the plaintiffs for the
24 first time last Friday. He is the chief quality officer at
25 Aurobindo Pharma Limited.

1 As stated in my position statement, you know, we
2 obviously, object to adding him as a custodian at this late
3 juncture and we feel it would be overly burdensome for all of
4 the reasons that I previously went into, which I'm not going to
5 go over again. But, particularly, you know, they've had these
6 documents for months. It's not a surprise. You know, if they
7 see his name in there, he should have been raised earlier and
8 because he's a chief quality officer, we believe that his
9 custodial file and deposition would be protected under the Apex
10 doctrine and we would appreciate having the opportunity to file
11 a motion for a protective order on that as some of the other
12 defendants have had an opportunity to do. So we cannot agree
13 to just produce Dr. Rao's custodian file or produce him as a
14 deponent.

15 JUDGE VANASKIE: Ms. Goldenberg.

16 MS. GOLDENBERG: Your Honor, yes. I should add, I'm
17 not wedded to four custodians. I just want the right ones.
18 And so if we find out that we need to drop someone to get Dr.
19 Rao's file, I'm not opposed to that. But what we put in our
20 papers, you know, is that we're not even sure the other two are
21 the right people and what I just heard from Ms. Heinz is, we'll
22 get back to you but I'm still not going to answer your
23 question.

24 And so, yes, we've known about Dr. Rao, it's someone
25 that we've had flagged as someone who was maybe relevant, but,

1 you know, we were willing to accept other names from Ms. Heinz.
2 We cross-checked them and I just don't think that they're the
3 right people. And so in the absence of other information, this
4 is the person that we think we need instead.

5 JUDGE VANASKIE: What about the Apex doctrine and the
6 request of Ms. Heinz to brief that issue?

7 MS. GOLDENBERG: Yes, so, you know, I saw Ms. Heinz
8 raise that issue as to two different individuals, Venkata Kota
9 and to Dr. Rao. Venkata Kota is a custodian that Aurobindo
10 agreed to produce the file for, and, you know, arguably -- or I
11 actually think that, you know, a chief operating officer is
12 much more of an apex witness than is a chief quality officer.
13 And so I guess I'm confused about why they're opposing the
14 custodial file. I was going to get to the deposition issue
15 next, but I'm happy to address that now if you'd like at the
16 same time.

17 JUDGE VANASKIE: Well, I think right now we're dealing
18 with custodial files. I don't want to get too far down the
19 road.

20 Ms. Heinz?

21 MS. HEINZ: I was just going to say, Your Honor, that
22 we have told the plaintiffs before that Mr. Kota is a former
23 employee. He's no longer employed with Aurobindo. So we have
24 no -- we're not going to produce him for a deposition. I just
25 wanted to clarify that.

1 JUDGE VANASKIE: Okay.

2 MS. GOLDENBERG: Well, that makes it easier. We can
3 just notice him up as a former employee, so I think we're down
4 to one issue.

5 So for Dr. Rao, the Apex doctrine is here to protect
6 witnesses who really don't know anything and who are just at
7 the top of the company; right? So we don't get to depose Steve
8 Jobs if my iPhone explodes and hurts my finger; right? But in
9 this case, that's not who Dr. Rao is. Dr. Rao is providing
10 direct advice to his company about what to put in FDA letters
11 or correspondence to the FDA about this contamination issue.
12 He's the one who signs off on a bunch of responses to the FDA
13 about their contamination. And so this is not a CEO who's
14 aloof on the 51st floor of a building; this is someone who's
15 directly involved here, and the Apex doctrine, there's a wealth
16 of case law, and I actually pulled some for you that says that
17 if the witness does have direct knowledge, then the Apex
18 doctrine doesn't protect them. And I'll refer Your Honor to
19 the *In Re: Tylenol* case. It's 24 --

20 JUDGE VANASKIE: Is this -- I'm sorry to interrupt
21 you. I don't mean to do that. But you filed a letter brief
22 today?

23 MS. GOLDENBERG: Yes.

24 JUDGE VANASKIE: So is this in the letter brief you
25 filed today?

1 MS. GOLDENBERG: It's not because that was actually on
2 a different issue.

3 JUDGE VANASKIE: Okay. All right.

4 MS. GOLDENBERG: And I don't need to read it in the
5 record if you don't need the case law but --

6 JUDGE VANASKIE: Okay.

7 MS. GOLDENBERG: -- I certainly have it for you.

8 JUDGE VANASKIE: Well, what I'm suggesting is that I
9 need to take a look at the case law, which I haven't done yet.
10 And so I'm also influenced by the length of this call so far.
11 And I'm going to suggest that I -- when I get the transcript I
12 study this issue and take a look at the cases and make a prompt
13 determination. It shouldn't be a difficult determination to
14 make.

15 So if you don't mind, I think I will defer on this
16 issue for now.

17 MS. GOLDENBERG: No problem, Your Honor.

18 JUDGE VANASKIE: It's been well presented.

19 Now, I haven't looked at the letter brief that was
20 filed today.

21 MS. HEINZ: Your Honor, if I may.

22 JUDGE VANASKIE: Yes.

23 MS. HEINZ: I'm sorry to interrupt you. I'm just a
24 little confused because we did not brief our argument on the
25 apex issue in our position statement. We actually -- we -- you

1 know, this just arose for the first time last Friday. We
2 haven't even had a chance to have a meaningful meet and confer
3 with the plaintiffs about it. But aside from that, you know,
4 other defendants, when this similar issue arose, they had an
5 opportunity to file a brief, and we would -- we would ask for
6 the same opportunity for our clients. We think that we should
7 have -- and it shouldn't take long, we can turn it around very
8 quickly, but we would appreciate the opportunity to submit a
9 brief on that.

10 JUDGE VANASKIE: Well, I think you should have that
11 opportunity. And so how much time do you want?

12 MS. HEINZ: If Your Honor is willing to give us two
13 weeks, we would appreciate that. I'll defer to Your Honor, if
14 that's all right.

15 MS. GOLDENBERG: Your Honor, respectfully, we've got
16 production deadlines here. I mean, I guess if they want two
17 weeks to brief the issue and it's not going to change their
18 production deadline, I have no problem with that; but, I mean,
19 I can have a brief ready to go by Friday.

20 JUDGE VANASKIE: Well, are you going to do another
21 brief then, Ms. Goldenberg?

22 MS. GOLDENBERG: So we also didn't brief this issue.
23 We actually weren't told by Aurobindo that they were opposing
24 this until I saw their agenda letter. So I don't think this is
25 a complex issue. It's just, are these two apex witnesses and

1 I've got the case law pulled so I think this is no more than a,
2 you know, three-page brief and I can have it done by Friday.

3 JUDGE VANASKIE: All right. We'll take your brief by
4 Friday and we'll provide Aurobindo until the following Friday
5 to file a reply brief.

6 MS. GOLDENBERG: Just from a procedural matter, Your
7 Honor, this is Aurobindo's motion for a protective order and
8 because the burden is theirs, I think the first brief is
9 theirs.

10 JUDGE VANASKIE: Okay. You probably are right on
11 that.

12 Well, Ms. Heinz, I can't give you two weeks. That's
13 too long a time.

14 MS. HEINZ: We can have a brief to Your Honor by next
15 Friday.

16 JUDGE VANASKIE: That's a little bit longer than I'd
17 like. I'm going to ask for a brief by next Tuesday. All
18 right? And then you'll have until Friday, Ms. Goldenberg,
19 based upon representations you made here --

20 MS. GOLDENBERG: No problem, Your Honor.

21 JUDGE VANASKIE: -- to reply promptly.

22 MS. GOLDENBERG: All right. We're almost to the end.
23 So we've now reached the subject of the letter briefs
24 that were filed today. This is ToxRox and Meridan.

25 JUDGE VANASKIE: Go ahead, Ms. Heinz, I'm going to let

1 you interrupt.

2 MS. HEINZ: I just wanted to turn this over.

3 Actually, my colleague is going to be handling this issue,
4 Ethan Feldman. He is on the Zoom call. At this time I'm going
5 to turn it over to him.

6 JUDGE VANASKIE: All right. Very well.

7 MS. HEINZ: Thank you, Your Honor.

8 MR. FELDMAN: Good evening, Your Honor.

9 JUDGE VANASKIE: Good evening.

10 Ms. Goldenberg.

11 MS. GOLDENBERG: Sure. So, Your Honor, these entities
12 probably sound familiar to you. I think you started with us
13 right around the time that this third-party discovery hearing
14 happened and it may have been your first call with us, but we
15 had a long hearing with Judge Schneider about a number of
16 third-party subpoenas that the plaintiffs had served. Two of
17 those entities are the subject of our discussion today, and
18 they are ToxRox and Meridan. These are two independent
19 consultants that were retained by Aurobindo for the purpose of
20 responding to the FDA's 483 or -- or inspection letters that
21 were sent to Aurobindo's facilities. And after the oral
22 argument, we had reached an agreement with Aurobindo that they
23 would be producing these documents subject only to review for
24 privilege and work product and the letter brief that I filed
25 this afternoon contained an email from Mr. Feldman saying just

1 that. We also attached part of the transcript from the hearing
2 where he made that same offer. And now what we're seeing is
3 that they're trying to say, no, no, no, there was some
4 different ruling about a different third-party subpoena saying
5 that draft documents don't apply and so the plaintiffs don't
6 get that. And they are also simultaneously withholding a bunch
7 of documents based on privilege and work product that we have
8 challenged as inappropriate designations. And the overarching
9 basis for that is that these are third-party entities and
10 they're independent third-party entities. Their documents
11 confirm that and we filed one of those as an exhibit to our
12 brief this afternoon.

13 So they're not agents of the company. They're not
14 there to provide legal advice for this case or any other case
15 and the responses to the 483 letters would have happened
16 regardless of whether or not this MDL showed up or not.

17 And so any claim of privilege or work product is just
18 wholly inappropriate for these entities. And Judge Schneider
19 actually addressed this in the hearing and we attached the
20 relevant pages of that transcript for you as well because,
21 otherwise, the transcript's really long, we all sat through
22 that hearing. But, you know, he said, look, I've already
23 written an opinion on this, it's on point. And so I know we
24 have sent pages and pages to you on this subject but I'll say
25 Judge Schneider's ruling is the open and closed, you know,

1 dispositive ruling on this issue and there's no reason why
2 privilege or work product should apply to any one of these
3 documents.

4 JUDGE VANASKIE: Is that the *Riddell* ruling?

5 MS. GOLDENBERG: It is.

6 JUDGE VANASKIE: Okay. All right. Mr. Feldman.

7 MR. FELDMAN: Thank you, Your Honor.

8 First of all, I'd like to apologize to Ms. Goldenberg
9 for any appearance of a misrepresentation that may have
10 occurred. I know we have been working together for a while. I
11 do value the working relationship we have and it was not my
12 intention to misrepresent or even appear to misrepresent any
13 email sent by her or her colleagues.

14 Ms. Goldenberg indicated that these entities are
15 outside consultants. This sort of relationship was examined in
16 a case which was fully briefed but, essentially, in the case
17 that was briefed, there were -- there was an FDA warning letter
18 issued. The entity obtained outside consultants to assist it
19 in its response and the ruling in that case was that the work
20 product privilege was upheld. It's the same thing that
21 happened in this case.

22 Aurobindo, through its counsel, obtained the services
23 of Meridan and ToxRox in response to an FDA warning letter and
24 their documents, likewise, should be protected by the work
25 product doctrine.

1 Additionally, I wanted to address an email that Ms.
2 Goldenberg referenced that was sent by me with regard to the
3 fact that a lot of these documents here are, indeed, draft
4 documents. That email was sent after the ruling that Judge
5 Schneider issued that draft documents should not be
6 contemplated in these third-party subpoenas. So I just wanted
7 to clarify that for the record.

8 I do have in the letter that was filed today Judge
9 Schneider's sustaining the objection to the draft documents.
10 It was in regard to a ZHP specific entity but I also wanted to
11 point out to the Court that later on in that same hearing,
12 Judge Schneider suggested that the parties should use the
13 guidance offered during that hearing to go back and narrow the
14 rest of the subpoenas.

15 So we believe that these documents are both protected
16 by the work product privilege and that since they are draft
17 documents, the Court has already issued a ruling on this and
18 they are not proper under the third-party subpoenas.

19 MS. GOLDENBERG: Your Honor, you're on mute.

20 JUDGE VANASKIE: You are right. I will give you the
21 final word on this issue.

22 MS. GOLDENBERG: Sure. So, Your Honor, as to the
23 draft document issue, I'll point out that the reason I attached
24 the transcripts from the argument on the ToxRox and Meridan
25 issue, as well as Mr. Feldman's email, was for the very reason

1 that his first offer came before the draft document ruling ever
2 came out. So I don't think his intention was ever to include
3 the draft document ruling, to the extent it does apply, which I
4 don't think it does, to the Aurobindo stuff. And so, again, I
5 think this is just a last-ditch attempt to keep documents that,
6 you know, frankly, should have been turned over to us weeks ago
7 away from attorneys' eyes on the plaintiffs' side.

8 But, again, with regard to these entities, the law is
9 clear that it protects agents of companies. It doesn't protect
10 anyone that you hire to do anything for any reason. And the
11 documents that we sent you contain express recommendations from
12 Aurobindo that these entities are independent, that they were
13 retained to do the independent analysis that the FDA asked for.
14 And what I think is most telling is that counsel for Aurobindo
15 even dropped a footnote in their letter saying that they hadn't
16 even been hired when ToxRox and Meridan did this. So to say
17 that this was done in preparation for litigation is just
18 disingenuous.

19 JUDGE VANASKIE: You know, there's case law in the
20 data breach area that's been coming out dealing with the
21 question of work product protection for consultants hired to
22 examine what happened and do the analysis in connection with
23 data breach incidents, and the general tenor of those cases is
24 that the work product protection doesn't apply because they are
25 not prepared in anticipation of litigation.

1 Do you think that's a relevant area of law for me to
2 look to here, Mr. Feldman?

3 MR. FELDMAN: Your Honor, if I may, I think that the
4 case *Todd v. STAAR Surgical* is pretty on point here. Like I
5 said before, that deals with an FDA warning letter, that deals
6 with consultants hired and that also deals with the specific
7 work product protection. So as a first resort, I would refer
8 Your Honor to that case.

9 JUDGE VANASKIE: All right.

10 MR. FELDMAN: And from there, Your Honor is, of
11 course, free to dive down that rabbit hole, if you will.

12 JUDGE VANASKIE: Okay. All right.

13 MR. FELDMAN: I would also like to point out the fact
14 that just because agreements started before a court ruling
15 doesn't mean that plaintiffs should be entitled to circumvent
16 that. And that is with regard to the fact that draft documents
17 were withheld from previous third-party subpoenas.

18 JUDGE VANASKIE: All right. Anything else on this
19 issue, Ms. Goldenberg? I'm going to take it under advisement.

20 MS. GOLDENBERG: No, but I think if you're telling me
21 the data breach cases are good for me, then, by all means,
22 please rely on them.

23 JUDGE VANASKIE: All right. Is there anything else?

24 MS. GOLDENBERG: Let me just double-check. I think --
25 dare I say we might be done? Yes.

1 JUDGE VANASKIE: All right. We are going to conclude
2 for today, unless somebody else has something they want to
3 raise.

4 MS. PRISELAC: Your Honor?

5 JUDGE VANASKIE: Ms. Priselac.

6 MS. PRISELAC: Yes, this is Jessica Priselac for ZHP
7 entities.

8 To the extent you are going to schedule an argument,
9 you said probably Monday or Tuesday of next week?

10 JUDGE VANASKIE: Yes, I was looking towards Tuesday,
11 but go ahead.

12 MS. PRISELAC: Would it be possible to schedule it
13 before 2 p.m.? I conferred with Mr. Goldberg and we'd both
14 like to be present and I do have a conflict at 2 p.m. on
15 Tuesday.

16 JUDGE VANASKIE: I certainly can do that.

17 MS. PRISELAC: Thank you. I very much appreciate it,
18 Your Honor.

19 JUDGE VANASKIE: Sure thing. Thanks for letting me
20 know about the conflict.

21 All right. I have to thank Camille for yoman's work
22 here tonight. I mean, that's a long time for a court reporter
23 to be going. Thank you very much. I'm sensitive to that. I
24 knew we were going to have a long call but I didn't think it
25 was going to be this long.

1 But thank you all very much. We'll get the
2 transcript. I will be issuing some orders based upon things I
3 ordered here today. I will get out an order that schedules
4 oral argument, Ms. Priselac, for next Tuesday and it will be
5 suitably in advance of 2:00. All right?

6 I think we're adjourned. Thank you all very much.

7 (The proceedings concluded at 6:24 p.m.)

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12 I certify that the foregoing is a correct transcript
13 from the record of proceedings in the above-entitled matter.

14

15 /S/ Camille Pedano, CCR, RMR, CRR, CRC, RPR
16 Court Reporter/Transcriber

17 03/12/2021
18 Date

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